



REPORT TO THE PLANNING COMMISSION

AGENDA ITEM NO. VII - A
COMMISSION MEETING 11-17-04

November 17, 2004

FROM: STAFF, Planning Division
Planning and Development Department

APPROVED BY

DEPARTMENT DIRECTOR

SUBJECT: CONSIDERATION OF PLAN AMENDMENT APPLICATION NO. A-00-23,
REZONE APPLICATION NO. R-00-52, AND ENVIRONMENTAL IMPACT
REPORT NO. 10129 (SCH NO. 2001021030) FOR THE "FRESNO 40"
PROJECT

EXECUTIVE SUMMARY

At the Council hearing of November 19, 2002, regarding the 2025 Fresno General Plan, staff stated that there were over 20 plan amendment applications that had been filed with the City following the Council initiation of the 2025 General Plan. Since these amendment requests were filed after the 2025 Fresno General Plan was initiated, they could not be incorporated into the General Plan review process. This is one of the above-noted plan amendment applications, and this amendment proposes to allow for a development that meets the goals and policies of the approved 2025 Fresno General Plan.

Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 relate to the development of 38.93 acres of property (the "Fresno 40" site) located between North Friant Road, North Fresno Street, East Audubon Drive and East Cole Avenue. The plan amendment would amend the 2025 Fresno General Plan and the Woodward Park Community Plan for a portion of the subject property from the office commercial to the community commercial plan land use designation (**Exhibit A-1**). The rezoning application proposes to rezone a portion of the subject property from the C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) and R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*) to the C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*) zone district for the retail commercial portion of the site (**Exhibit A**).

The above applications are proposed in order to allow for the future development of the site with a mixed-use retail, office, and multiple family residential project with up to 274,000 square feet of office development, 203,000 square feet of retail commercial development including a supermarket, and 20 multiple family residential dwelling units.

The applicant, in conjunction with city staff, has completed an Environmental Impact Report (EIR) for the project, and the project is now scheduled for consideration by the Planning Commission. The Northeast Area Plan and Implementation Committee reviewed the project on November 15, 2004, and staff will present the Committee recommendation to the Commission at the November 17, 2004, meeting.

PROJECT INFORMATION

PROJECT

Plan amendment and rezone applications to develop the 38.93-acre site with 15.94 acres of community commercial uses and 22.99 acres of office commercial use (**Exhibit A**). This land use configuration would provide for a community shopping center of up to 203,000 square feet including an approximately 50,000 square foot supermarket, multiple story office development of up to 274,000 square feet and approximately 20 multiple family residential dwelling units. A preliminary site plan is attached as **Exhibit B** showing a conceptual land use plan for the property.

APPLICANT	DeWayne Zinkin
LOCATION	Between North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive (Council District 6, Councilmember Duncan)
SITE SIZE	38.93 acres
LAND USE	Existing - Office Commercial Proposed - Community Commercial (15.94 acres), Office Commercial (22.99 acres) (Exhibit A)
ZONING	Existing - C-P/UGM/cz (<i>Administrative and Professional Office/ Urban Growth Management/conditions of zoning</i>) R-P/UGM/cz (<i>Residential and Professional Office/Urban Growth Management/conditions of zoning</i>) Proposed - C-P/UGM/cz (<i>Administrative and Professional Office/ Urban Growth Management/conditions of zoning</i>) 10.98 acres R-P/UGM/cz (<i>Residential and Professional Office/Urban Growth Management/conditions of zoning</i>) 12.01 acres C-2/UGM/cz (<i>Community Shopping Center/Urban Growth Management/conditions of zoning</i>) 15.94 acres (Exhibit A)
PLAN DESIGNATION AND CONSISTENCY	Application requests an amendment to the 2025 Fresno General Plan and Woodward Park Community Plan (Exhibit A-1) from office commercial to community commercial land uses. The proposed C-2/UGM/cz (<i>Community Shopping Center/Urban Growth Management/ conditions of zoning</i>) zone district is consistent with this proposed land use designation.
ENVIRONMENTAL FINDING	Environmental Impact Report (EIR) No. 10129, dated July 2004, was prepared determining that the project would result in significant adverse environmental impacts that may be entirely or partially mitigated.
PLAN COMMITTEE RECOMMENDATION	On November 15, 2004, the Northeast Area Plan and Implementation Committee will review the proposed project. Staff will forward the recommendation of the Committee to the Planning Commission at the November 17, 2004, meeting.
STAFF RECOMMENDATION	Recommend that the City Council certify Environmental Impact Report No. 10129 (SCH No. 2001021030) and adopt appropriate environmental impact mitigation measures and approve the proposed project subject to the conditions noted below.

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Medium-Low Density Residential	R-1-C/UGM <i>Single Family Residential/Urban Growth Management</i>	Single Family Residential
South	Office Commercial	C-P/UGM <i>Administrative and Professional Office/Urban Growth Management</i>	Office Commercial
East	Medium and Medium-Low Density Residential	R-2-A/UGM, R-1-B/UGM, R-1/UGM <i>Low Density Multiple Family Residential, Single Family Residential/Urban Growth Management</i>	Sugar Pine Trail, Single Family Residential, Multiple Family Residential, Ponding Basin
West	Office Commercial	C-P/UGM <i>Administrative and Professional Office/Urban Growth Management</i>	Office Commercial

ENVIRONMENTAL FINDING

The planning firm of Land Use Associates of Fresno, California was retained by the City of Fresno and the applicant to prepare the revised Environmental Impact Report (EIR) for the project. The EIR was assigned City of Fresno EIR No. 10129 and State Clearinghouse No. 2001021030, respectively, for the project. A Notice of Preparation (NOP) for a Draft EIR was circulated by the City of Fresno on April 30, 2004, and a public scoping meeting was held by the City of Fresno on May 27, 2004.

Through the EIR process, areas of significant and unavoidable impacts resulting from the proposed project were identified. These areas include cumulative air quality impacts, noise impacts associated with mobile noise sources, and project related and cumulative traffic impacts. The EIR includes traffic, noise, and air quality studies. Additional issues raised during the EIR comment period included land use compatibility and the need for a unified site plan for the Fresno 40 site.

Environmental Impact Report (EIR) No. 10129 (SCH No. 2001021030) was prepared to provide an environmental impact evaluation of the project at a conceptual program level comparable to the analysis provided for a community plan or specific plan. The project description established with the plan amendment and rezoning applications provides a more complete set of guiding development parameters and establishes a more precise definition of the maximum level of project development. Sufficient project information was provided in terms of the locations, sizes, and intensities of planned uses to provide a more magnified evaluation of the potential environmental impacts and identification of appropriate mitigation measures. However, formal site plan drawings were not available to examine the precise details of building arrangements or points of direct vehicular and pedestrian access. Therefore, the environmental analysis concludes that an even more detailed evaluation is appropriate with the submission of project related special permits.

EIR No. 10129 was prepared in accordance with the provisions of the California Environmental Quality Act (CEQA) as codified in the California Public Resources Code, Division 13, and the implementing guidelines as codified in the California Code of Regulations, Title 14, Chapter 3. This process included the distribution of requests for comment to other responsible or affected agencies and interested organizations and persons. A public review period of 45 days (July 16, 2004, through August 30, 2004) was provided to allow adequate opportunity for interested persons to review and comment and an additional 10 days was added to the review period. Twelve written comments were received regarding the EIR and responses to these comments have been prepared by city staff and project consultants.

Preparation of the EIR necessitated a thorough review of the proposed project and relevant environmental issues and considered previously prepared environmental and technical studies pertinent to the metropolitan area and the Woodward Park Community Plan area including the Master Environmental Impact Report (MEIR No. 10130) for the recently adopted 2025 Fresno General Plan. These previous environmental and technical studies have examined projected sewage generation rates of planned urban uses, the capacity of existing sanitary sewer collection and treatment facilities, and optimum alternatives for increasing capacities; groundwater aquifer resource conditions; water supply production and distribution system capacities; traffic carrying capacity of the planned major street system; and, student generation projections and school facility site location identification.

The proposed project, which includes an amendment of the adopted 2025 Fresno General Plan, has been determined to not be fully within the scope of MEIR No. 10130 as provided by CEQA, as codified in the Public Resources Code (PRC) Section 21157.1(d) and the CEQA Guidelines Section 15177(c). It has been further determined that all applicable mitigation measures of MEIR No. 10130 will be applied to the project, together with the project specific mitigation measures as identified by EIR No. 10129. Therefore, the project will not cause significant adverse cumulative impacts, growth inducing impacts and irreversible significant effects beyond those identified by MEIR No. 10130 as provided by CEQA Section 15178(a) especially since the average daily vehicle trips (ADT) expected for the site is within the limit (12,400 ADT) allowed by the 1990 rezoning of the site and this zoning and land use were assessed by MEIR No. 10130. However, it has been determined that based upon the analysis and evidence in the record that the project will have significant impacts upon the environment that necessitate the application of mitigation measures in addition to those identified by MEIR No. 10130.

EIR No. 10129 addresses adverse environmental impacts that may occur within ten topical areas including land use and planning; traffic and circulation; air quality; geology and soils; biotic resources; noise; drainage; public facilities and services; aesthetics; and cultural resources. Within these categories, 25 potential environmental impacts were identified related to the project of which 15 necessitated the application of mitigation measures in addition to, or supplemental to, those property development standards and requirements typically applicable to development projects. Based upon the analysis of the EIR, including the information contained within the three referenced technical studies, it has been determined that 13 of the identified impacts can be substantially mitigated. However, adverse impacts that would occur within two environmental review categories (traffic and circulation and air quality) will remain significant effects (although identified mitigation measures will reduce these impacts to the extent feasible) thus necessitating City Council review and adoption of overriding technical, social, economic, fiscal, environmental, land use, and other considerations.

BACKGROUND / ANALYSIS

The subject property (Fresno 40 site) is located in the northern portion of the City of Fresno between Friant Road, Audubon Drive, Cole Avenue, and Fresno Street. In 1990 the Fresno City Council approved a request by Valley Children's Hospital to change the zoning on the site to the current C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) and R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*) zone districts. This zoning was intended to allow for the construction of a hospital and associated offices on the subject property. Subsequent to the approval of the rezone application, Valley Children's Hospital chose to develop the hospital in Madera County rather than on the subject property and then sold the southerly half of the property to DeWayne Zinkin and the northerly half to another party.

The zoning that was approved in 1990 still exists on the subject property. This zoning was approved with the following conditions:

1. For any development submitted for the site of the requested zoning, building permits shall not be issued unless the applicant provides for the development of an additional standard City water well providing a minimum of 1000 gpm of water meeting maximum allowable contaminant levels that is operational and is connected to either the transmission grid main in East Audubon Drive or Friant Road within one-half mile of the development.

The applicant may choose at any time prior to the issuance of building permits to use data provided by the computer water flow model, to determine to the satisfaction of the Public Works Director that an adequate supply of water for domestic and fire uses is available at the time of occupancy and that, therefore, the above-noted condition is not needed.

2. The following traffic mitigation measures shall be required.
 - a. Signalize the main North Fresno Street access road intersection.
 - b. Signalize the intersection of East Audubon Drive and East Cole Avenue.
 - c. Construct a right turn lane and driveway on Friant Road between North Fresno Street and East Audubon Drive.
 - d. Construct two right turn lanes and driveways on East Audubon Drive between Friant Road and East Cole Avenue, one driveway to be aligned with the existing westbound left turn lane, the other east of North Colfax Avenue.
 - e. Construct a right turn lane and driveway on Fresno Street approximately 230 feet southeast of Friant Road.
 - f. Stripe Friant Road for three lanes in each direction from Freeway 41 to 200 feet north of East Audubon Drive.
 - g. Stripe North Fresno Street for three lanes in each direction from Friant Road to Herndon Avenue.

- h. Traffic generation from development of the subject site shall not exceed 12,400 daily vehicle trips as determined by ITE Trip Generation, Fourth Edition.
 - i. Upon submittal of a development entitlement application, which can provide for a more accurate basis for determining traffic impacts, the applicant shall be entitled to request that the above mitigation measures be modified by the Public Works Director and the Traffic Engineer. However, in no case may traffic generated by the site exceed 12,400 daily vehicle trips.
- 3. There shall be a 50-foot landscaped setback along East Audubon Drive.
 - 4. The single story office buildings along East Audubon Drive and East Cole Avenue shall be residential in character.

In December 2000 the applicant (DeWayne Zinkin) submitted Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 for the southern 19.46 acres of the subject property (Fresno 40 site). Plan Amendment Application No. A-00-23 proposed to amend the 1984 General Plan and the 1989 Woodward Park Community Plan from office commercial to community commercial (13.46 acres) land use designation and high density residential (3.16 acres) land use designation. A parcel of 2.84 acres was to remain office commercial. Amendment to the text of the Woodward Park Community Plan was also proposed adding the Fresno 40 parcel to the community plan activity center. This land use configuration would have provided for a community shopping center including a supermarket, approximately 78 multiple family residential dwelling units, and a multiple story office development on the southern half of the site.

At that time, the northern half of the site was owned by others and no changes to existing plans and zoning were proposed for that portion of the site. A formal conditional use permit had been submitted to the City of Fresno for the northern half in March 2002 proposing development in accordance with the existing zoning of R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditional zoning*) and C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditional zoning*).

In March 2002 Draft EIR No. 10129 was circulated for public review and comment by the City of Fresno. The Draft EIR assessed the proposed amendment to the southern half of the Fresno 40 site. The northern half of the site, including the submitted conditional use permit, was included in the EIR for analysis purposes. Final EIR No. 10129 was prepared for this project, however, the project did not proceed to a public hearing. As a result, this proposed plan amendment and rezoning for the southern half of the project was never approved.

In November 2002 the City adopted the 2025 Fresno General Plan. The updated plan continued to designate the site for office commercial land uses (**Exhibit A-1**). The 2025 General Plan did, however, include the subject property within the Woodward Park Activity Center as originally defined by the 1989 Woodward Park Community Plan (**Exhibit 6**). The adopted 2025 Plan also included many policies supporting infill and mixed-use development.

In September 2003 DeWayne Zinkin purchased the northern half of the Fresno 40 site, bringing the entire site under one ownership. DeWayne Zinkin then revised the previous plan amendment and rezone applications proposing development of the entire site. The applicant has also updated and re-

circulated Draft EIR No. 10129 to reflect the revised project and has included new environmental information related to traffic and air quality that was not known at the time of preparation and review of the previous EIR.

The now proposed office, retail commercial and residential mixed-use project involves the entire site of 38.93 acres. An 0.84-acre portion of the existing R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*) zoned area adjacent to East Cole Avenue is proposed to be changed from the office commercial to the community commercial land use designation and zoned C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/ conditions of zoning*). In addition, 15.10 acres of existing C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) zoning on the southern portion of the property would be changed from the office commercial to the community commercial land use designation and zoned C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*). The resulting plan and zoning amendments would be:

<u>Plan Amendment:</u>	From Office Commercial to Community Commercial - 15.94 acres (Exhibit A-1)
<u>Zoning Amendment:</u>	From C-P/UGM/cz to C-2/UGM/cz - 15.10 acres
	From R-P/UGM/cz to C-2/UGM/cz - 0.84 acres

The plan designation and zoning on the remainder of the site would not be changed. The final site configuration would be as shown on attached **Exhibit A** as described below:

C-2/UGM/cz (Community Shopping Center District/Urban Growth Management/conditions of zoning):	15.94 acres
C-P/UGM/cz (Commercial Professional/Urban Growth Management/conditions of zoning):	10.98 acres
R-P/UGM/cz (Residential Professional/Urban Growth Management/conditions of zoning):	<u>12.01 acres</u>
	38.93 acres

It is proposed that the project site be developed with approximately 274,000 square feet of offices, 203,000 square feet of retail uses (including a supermarket), and 20 residential dwelling units. The applicant has submitted a preliminary site plan (**Exhibit B**) for the subject site. It is noted that a formal site plan review is not being applied for at this time, therefore, the site plan is conceptual and subject to change. The preliminary site plan shows a common drive from Friant Road that would be utilized by both the southern retail portion of the site as well as the northern office portion of the site. The preliminary site plan also shows water features, parking and circulation, and locations for primary buildings. Building "Major A" at 50,000 square feet would be the most likely location for a supermarket, should this use be approved.

When zoning from residential to office uses was granted to Valley Children's Hospital in 1990, a single-story limitation was placed along East Audubon Drive and a major portion of East Cole Avenue on the east; this limitation was implemented by zoning the area R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*). The purpose of this single story limitation is to limit potential land use and aesthetic impacts on existing residential areas adjacent to the site. This single story limitation for the most part will remain in place, a small portion (0.84 acres) of the R-P (*Residential and Professional Office*) zoned property along East Cole Avenue is proposed to be rezoned to the C-2 (*Community Shopping Center*) zone district and developed with commercial uses.

The impacts to residential uses on the east side of Cole Avenue are reduced somewhat by the geography of the Fresno 40 site and the orientation of the residences. Existing residences adjacent to Cole Avenue across from the subject site are low density apartments and single story condominiums

that side, rather than front, onto East Cole Avenue. In addition, these residential units are separated from the subject property by Cole Avenue and the Sugar Pine Trail. As a result, the nearest residence on East Cole Avenue is an estimated 130 feet from the Fresno 40 property line.

Single story residences front onto East Audubon Drive to the north of the project site. No land use changes to the presently planned office uses are proposed for the northern half of the Fresno 40 site and office uses are proposed across East Audubon Drive from these existing residences. In addition, a 50-foot landscaped setback will be required on the south side of Audubon Drive that will incorporate an earth berm and tree plantings to shield office uses on the site from existing residential uses on the north.

A major feature of the site is the Sugar Pine Trail, which extends along the Cole Avenue frontage. The trail, constructed within the abandoned Southern Pacific Railroad spur, which connected Clovis with the Pinedale industrial area, is an important regional recreational amenity. The trail consists of a 12-foot paved path for both pedestrians and bicyclists with adjacent trees and other landscaping. The trail will not be compromised by the proposed project.

In addition to the low density multiple family uses and attached single family condominiums, a large Fresno Metropolitan Flood Control District ponding basin is located to the east of Cole Avenue. To the south across North Fresno Street and to the west across Friant Road are office buildings extending to four stories in height.

Land Use Plans and Policies

The subject project contains an area of approximately 39 acres between Friant Road, Audubon Drive, Cole Avenue, and Fresno Street. The entire site is currently planned for office commercial development and is zoned R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*) and C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*). The plan amendment and rezone applications would amend approximately 16 acres of the southerly portion of the subject property to the community commercial plan designation and rezone the property to the C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*) zone district to allow for retail commercial uses (**Exhibit A**).

The development project proposes that these plan designations be implemented with a maximum allowable building area of 274,000 square feet of office development, 203,000 square feet of retail commercial development, and 20 residential dwelling units.

The recently adopted 2025 Fresno General Plan provided a comprehensive restatement of goals, objectives, and policies that formulate the city's strategies for the growth and development of the metropolitan area. The following overall guiding general plan goals are applicable to the proposed Fresno 40 project.

- Enhance the quality of life for the citizens of Fresno and plan for the projected population within the moderately expanded Fresno urban boundary in a manner which will respect physical, environmental, fiscal, economic, and social issues (Goal No. 1).
- Support the Growth Alternatives Alliance "Landscape of Choice-Principles and Strategies" as based upon the Ahwahnee Group Principles (Goal No. 5).

- Coordinate land uses and circulation systems to promote a viable and integrated multi-modal transportation network (Goal No. 6).
- Manage growth to balance Fresno's urban form while providing an adequate public service delivery system, which is fairly and equitably financed (Goal No. 7).
- Provide activity centers and intensity corridors within plan areas to create a mix of land uses and amenities to foster community identity and reduce travel (Goal No 9).
- Protect, preserve, and enhance significant biological, archaeological, and paleontological resources and critical natural resources, including, but not limited to, air, water, agricultural soils, minerals, plants, and wildlife resources (Goal No. 11).
- Develop urban design strategies to improve Fresno's visual image and enhance its form and function (Goal No. 12).
- Protect and improve public health and safety (Goal No. 14).

Determining the appropriateness of the proposed change to mixed use commercial, office, and residential use and the implementing R-P/UGM (*Residential and Professional Office/Urban Growth Management*), C-P/UGM (*Administrative and Professional Office/Urban Growth Management*), and C-2/UGM (*Community Shopping Center/Urban Growth Management*) zone districts should give consideration to the goals, objectives, and policies of the 2025 General Plan and appropriate land use planning concepts and principles.

Adopted 2025 General Plan policies strongly support the development of mixed-use projects and the infilling of bypassed vacant properties. The following objectives and policies are specifically directed toward the mixed land use concept:

Land Use / Activity Centers

- Adhere to a multiple community center concept of urban design for the Fresno metropolitan area as conceptually shown on General Plan **Exhibit 6** (Objective C-4).
- Strategically locate areas appropriate for more intensive concentrations of urban uses (Policy C-4-a).
- Activity centers should include commercial uses, employment centers, schools, higher density residential development, churches, parks, and other gathering points where residents may interact, work, and obtain goods and services in the same place (Policy C-4-b).
- Place emphasis on pedestrian activities and linkages, and provide for priority transit routes and facilities to serve the activity centers (Policy C-4-c).
- Activity centers should provide for mixed uses and shared parking facilities, including multi-story and underground parking facilities (Policy C-4-d).

Land Use / Mixed Uses

- Facilitate the development of mixed uses to blend residential, commercial, and public land uses on one site (Objective C-8).
- Develop zoning regulations that facilitate the appropriate mixing of commercial and noncommercial uses, either within a single structure or multiple structures within a defined area (Policy C-8-a).
- Ensure land use compatibility between mixed-use districts in activity centers and the surrounding residential neighborhoods (Policy C-8-d).

Land Use / Commercial

- Commercial land uses shall be classified, located, sized, and developed to meet needs for goods and services while minimizing travel requirements, infrastructure demands, and adverse impacts (Objective C-12).
- Ensure that all commercial land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services (C-12-a).
- Plan for office commercial developments of the appropriate amount, location, size and intensity necessary to meeting regional, metropolitan, community and neighborhood area needs consistent with the planned urban form and other applicable planning and zoning provisions (Policy C-12-c).
 - Locate office projects to provide a transition between more intensive commercial uses and sensitive residential uses.
 - Facilitate office development in conjunction with, and adjacent to, institutions and employment centers.
- Plan for the appropriate location, size, and distribution of neighborhood and community commercial uses to implement the planned urban form, promote the stability and identity of neighborhood and community area, and allow efficient access without compromising the operational effectiveness of planned major streets (C-12-d).
 - Neighborhoods should be anchored by commercial centers with a mix of uses that meet the area's need to achieve activity centers that create a sense of place.
 - Community commercial centers should be located at designated activity centers.
 - Retail commercial goods and services shall be provided in planned unified shopping centers, carefully designed small-scale commercial centers, and in neighborhood-oriented stores.

The proposed mix of commercial, recreational, office, public and residential land uses within this neighborhood, together with the now proposed Fresno 40 mixed-use project, will also support the policies and strategies of the "Landscape of Choice" document as endorsed by the City Council and adopted as Appendix A to the 2025 Fresno General Plan.

Based upon the applicability of adopted development standards, plan policies/implementation measures, applicable mitigation measures of the above-referenced environmental documents and staff recommended conditions of approval, it is concluded that the Fresno 40 project will further promote the achievement of the planned urban form and land use objectives of the 2025 Fresno General Plan and amended Woodward Park Community Plan.

Staff has concluded, based upon the above-noted considerations and modifications, that the Fresno 40 project would be compatible with the applicable community plan goals, policies, and implementation measures intended to provide for the efficient use of natural resources and public facilities; the construction of adequate public improvements by the development which generates the demand for these facilities; and, the implementation of a functional land use pattern consistent with the population and economic growth projections of the 2025 Fresno General Plan.

Water Resources and Public Water Supply

The Water Division of the Department of Public Utilities has indicated that an adequate source of water is available to serve the project with the implementation of the mitigation measures noted below. The nearest available water service lines are located in North Fresno Street and Friant Road adjacent to the site.

Implementation of the Water Resources Management Plan and the applicable mitigation measures of the environmental review of the project will address the issues of providing an adequate, reliable, and sustainable water supply for the project's urban domestic and public safety consumptive purposes.

Sewage Collection System Capacity

Several major facility improvement projects have been implemented at the City of Fresno's Regional Wastewater Treatment and Reclamation Facility in order to accommodate the projected rates of population and employment growth up to a projected population holding capacity of 590,000 people. These improvements have been completed to provide an expanded wastewater treatment and reclamation capacity of 80 million gallons per day (MGD), which is sufficient to accommodate continued planned urban development including the proposed project.

The Department of Public Utilities has determined that adequate sanitary sewer service is available to serve the project. The nearest public sanitary sewer main to serve this project is located in Friant Road and North Fresno Street adjacent to the subject site.

Traffic and Circulation

The project site is located between Fresno Street, Friant Road, Cole Avenue and Audubon Drive. Friant Road is designated as a super arterial, adjacent to the subject property, by the City of Fresno General Plan Circulation Element and is a major north-south roadway in the Woodward Park Area. Friant Road has an existing six lane median-divided cross section. A raised landscaped median separates the street into three travel lanes per direction. Friant Road in this location had a year 2002 traffic count of 52,900 vehicle trips per day (VTD) and has a projected year 2025 traffic count of 77,870 VTD.

North Fresno Street is designated as an arterial street by the City of Fresno General Plan Circulation Element in this location. North Fresno Street has a four lane median-divided cross section, separating two travel lanes per direction. North Fresno Street in this area had a year 2002 estimated traffic count of 9,190 VTD and has a projected year 2025 traffic count of 18,210 VTD.

East Audubon Drive is designated as a scenic arterial by the City of Fresno General Plan Circulation Element in this location. East Audubon Drive has a four lane median-divided cross section, separating two travel lanes per direction. East Audubon Drive in this area had a year 2002 estimated traffic count of 9,160 VTD and has a projected year 2025 traffic count of 12,650 VTD.

A traffic study was completed for the proposed project by VRPA Technologies dated July 8, 2004, and is incorporated into the technical appendices prepared in support of EIR No. 10129. The traffic analysis was prepared to analyze worst-case traffic conditions related to the Fresno 40 property, including the potential for a supermarket on the southern portion of the site. The analysis identifies potential traffic impacts and necessary mitigation measures to address these impacts.

An important goal is to maintain acceptable levels of service along the highway and street network. To accomplish this, Caltrans and local agencies adopt minimum levels of service (LOS) in an attempt to control congestion that may result as new development occurs. Caltrans' minimum LOS is C except where prohibitive, according to information specified in Caltrans' *A Guide For Traffic Impact Studies*. The City of Fresno's minimum LOS design standard is LOS D. Traffic impacts are considered to occur whenever the LOS exceeds D on the City street system, or C on the State highway system.

Trip generation for the Fresno 40 project has been estimated by VRPA Technologies. As noted above, there is an existing condition of zoning on the subject property, which allows a maximum trip generation of 12,400 trips per day (VTD). The proposed project (including a supermarket) is projected to generate 15,292 VTD.

The traffic analysis estimates that 2 percent of all trips attracted to the Fresno 40 project will be a combination of transit and non-motorized trips (mode split) given the multi-use characteristics of the proposed development and the location of the Sugar Pine Recreation Trail. Trips were further reduced by 6 percent to account for multi-use or "captured" trips, which are trips that are "internal to the site" resulting in reductions at project entrances, at adjacent intersections, and on adjacent roadways. Trips were further reduced an additional 16 percent to address "pass-by" trips, or trips already on the road system. Taking into account these various reductions to the total project generated trips, the project is projected to generate 12,297 VTD which is within the zoning condition requirement of 12,400 VTD.

The traffic study analyzed 11 street segments and nine project area intersections. Results of the intersection capacity analysis indicate that eight intersections studied are currently operating at adequate levels of service (LOS D or better). The Cole/Audubon intersection is unsignalized and operating at LOS F in both the AM and PM peak hours. A signal warrant prepared for this intersection determined that a signal is now needed. Three additional intersections, however, (Friant/Fresno, State Route 41 Northbound Ramps/Friant and Nees/Blackstone) are projected to operate at LOS E during the PM peak hour once the project is built. Results of the street segment capacity analysis indicated that ten segments studied are currently operating at adequate levels of service. Friant Road between East Shepherd and East Audubon is operating at an LOS F in both the AM and PM peak hours.

The traffic study assessed existing conditions and projected conditions in the year 2025 without and with the proposed development. With or without the proposed development in year 2025 (current zoning), eight street segments near the project site will operate at LOS F. Only three street segments in the project area are projected to operate at LOS D or better (Audubon from Cole to First, Audubon from Friant to Cole, and Audubon from State Route 41 Mainline to Friant). Reasons for the LOS deficiencies

vary, but for those segment intersections located along Friant Road and Nees Avenue, eight lanes are required along Friant Road (six existing) and six lanes are required along Nees Avenue (four existing) to achieve adequate levels of service at the intersections. For those segment intersections at State Route 41 Ramps and Friant Road, the intersections also fail given the lack of capacity to handle turning movements between Friant Road and SR 41.

With the development as proposed in year 2025, results of the AM and PM peak hour intersection analysis are identical to the year 2025 analysis without the project. In year 2025 all intersections are projected to operate at LOS F with the exception of the Friant Road and State Route 41 southbound intersection.

The traffic study identifies specific mitigation measures necessary to reduce traffic congestion to acceptable levels at various intersections adjacent to the project site. These measures are contained in Draft Environmental Impact Report No. 10129 on pages 2.2.33 through 2.2.35 and are referenced below under the staff recommended conditions of approval.

Project Access: Vehicular access to and from the site is proposed by the applicant as follows:

- Two access drives on North Fresno Street; primary access from North Fresno Street would occur at the existing traffic signal located at the southernmost of the two points to facilitate circulation to and from the site.
- Two access points to Friant Road north of North Fresno Street; both access points would be a right in/right out configuration.
- Two access drives to East Audubon Drive on the northern site boundary; these access drives would prohibit left-turns out of the project site onto Audubon Drive or cross traffic movements to local streets intersecting Audubon Drive from the north.

It is noted that the City's Traffic Division is recommending that only one access drive be permitted along Friant Road to avoid adding additional traffic to a segment of street that is projected to operate at an unacceptable level of service. It is also an existing condition of zoning on the property that there be only one permitted vehicular access point to Friant Road. The Traffic Division recommends that the one access point be centered between North Fresno Street and East Audubon Drive.

Direct pedestrian access to the site from surrounding residential uses will be encouraged. Sidewalks that will connect to proposed pedestrian paths internal to the project site and an internal bus stop will be developed adjacent to the project site along Friant Road, North Fresno Street, and the Sugar Pine Trail.

State Department of Transportation (Caltrans)

The California Department of Transportation (Caltrans), District 6, Office of Intergovernmental Relations has asserted that new development within the Woodward Park Community Plan contributes a substantial number of additional vehicle trips during the peak hour traffic periods (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) which will impact the State Route (SR) 41 interchange at Friant Road. Caltrans has requested that the project be required to pay its proportionate share of mitigation costs for various improvements such as auxiliary lanes and additional ramp lanes to the Friant Road interchange at Freeway 41.

Caltrans has indicated that the project's proportionate share of mitigation costs for improvements to this interchange is \$306,558. The environmental impact report prepared for this project identifies the project's proportionate share of mitigation costs to be \$43,897.

Caltrans staff asserts that the project traffic analysis does not adequately evaluate potential impacts upon these state facilities. Major freeway improvements are the responsibility of Caltrans and any fee related assessments imposed by Caltrans must comply with applicable legal parameters. The City has not recommended that the piecemeal application of a state facility traffic impact fee be imposed as a condition of project approval, as it is not evident that Caltrans has accurately documented a project description and cost, a reliable estimate of funding sources, a justifiable nexus or connection between a project and the need for the state facility improvements, and the reasonable proportionality of the project's share of the improvement costs that are necessary to justify the imposition of a traffic impact fee for the improvement of State facilities. This conclusion is based upon Caltrans submission of varying descriptions of the necessary freeway improvements, the imprecise estimate of costs and probable funding sources, and the lack of adequate information to comply with Fee Mitigation Act requirements applicable to the City of Fresno. In the absence of this documentation it is not legally permissible for the City to impose the requested traffic impact fee.

State highway facilities appear to have failed to meet 20-year capacity design criteria during a period of time when the area's pace of population growth decreased to a rate well below previous state projections. This highway facility "under-design" and consequently the capacity deficiencies, which may now be prematurely occurring, are at least partially the result of resource allocation decisions made by the State of California rather than land use decisions made by the City of Fresno.

An appropriate, reasonable, and legally permissible method of addressing capacity deficiencies has been presented to Caltrans for consideration. This method utilizes the master storm water drainage facility planning and fee program established by the Fresno Metropolitan Flood Control Agency as a model. Using this model, Caltrans is responsible for providing a master facilities plan, development fee schedule, and assurances of compliance with constitutional and statutory requirements (Mitigation Fee Act), which apply to the City of Fresno. Should Caltrans develop a master facilities plan and development impact fee program consistent with this model it will be applied to any applicable development entitlement, as appropriate.

Projected street and highway capacity deficiencies are primarily the result of previous planning and development decisions that have occurred throughout the region and the need to accommodate projected population growth consistent with State planning law including the housing element mandates (California Government Code Sections 65583 through 65895.5). These decisions include the concentration of intensive nonresidential urban uses along the Freeway 41 and Herndon Avenue corridors that attract trips from throughout the region and, thus, might facilitate the use of public transportation or other alternatives to the use of the private vehicle. It is also apparent that a substantial portion of the predicted vehicle trips impacting the plan area's major street system would be generated from land uses that are not equitably contributing to the cost of constructing adequate street capacity. Widely dispersed semi-urban or rural residential developments which have been approved beyond the Fresno Metropolitan Area are poorly suited for alternative forms of public transportation and have not been required to equitably contribute to the construction of additional major street capacity.

It is also noted that as a result of the meetings with Caltrans over the past several months, the Council of Fresno County Governments (COG) has applied for and been granted a Partnership in Planning Grant from Caltrans to perform a study that will examine the freeway interchanges on State Routes 99, 41, 180, and 168 within the Fresno-Clovis-South Madera County metropolitan area. This study will identify projected traffic demands and the need for additional traffic capacity. This study will focus on the area of impact, jurisdictional responsibilities and fair share fees, improvement costs, and funding sources. Findings from this study may be implemented by the cities of Fresno and Clovis as well as the counties of Fresno and Madera upon adoption by the respective jurisdictions.

CONDITIONS OF APPROVAL

Staff recommends that the following list of conditions be placed on the C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*) zoning proposed for the southerly portion of the subject property.

1. Before any development is allowed, a master conditional use permit/site plan review application shall be submitted to the City of Fresno for the entire Fresno 40 office/retail/residential mixed-use project. The master conditional use permit/site plan application shall:
 - Assure that building design, circulation, parking, and landscaping be appropriately unified and integrated. Rear and side building facades including colors, designs, textures, and materials shall be comparable to front building facades.
 - Permit residential uses at a scale and quality acceptable to the Planning and Development Director.
 - Promote pedestrian access to all on-site development and the Sugar Pine Trail.
 - Provide an appropriate facility for ready access to public transportation.
 - Be subject to public review and comment prior to its approval.
 - Contain appropriate timing provisions to assure the entire project is a mixed-use development.
2. No supermarkets (as defined by Fresno Municipal Code Section 12-105-S-36) or home improvement centers shall be permitted. Notwithstanding the above, the Planning and Development Director, subject to the approval of a conditional use permit (CUP), may allow specialty grocery and food sales, home design stores, appliance sales, and other retail and service uses over 15,000 square feet in gross building area. The primary purposes of the CUP are to (1) evaluate and limit excessive peak hour vehicle trips, (2) permit retail uses that are compatible with the entire Fresno 40 office/retail/residential mixed-use project, and (3) ensure a proper interface and compatibility with surrounding properties and uses.
3. A minimum 50-foot landscaped setback and earth berm, as reviewed and approved by the Planning and Development Director, shall be constructed along East Audubon Drive prior to any construction on the site.

4. The single story office buildings along East Audubon Drive and East Cole Avenue shall be residential in character.
5. Only one drive-through restaurant shall be allowed. The restaurant shall be located along North Fresno Street and shall be completely screened from view from abutting public streets.
6. There shall be no vehicular crossing of the existing Sugar Pine Trail.
7. Only one driveway access point shall be permitted to Friant Road in a location as approved by the Public Works Director and Planning and Development Director.
8. Traffic generation from development of the subject property shall not exceed 12,400 vehicle trips per day (VTD) as determined by the Public Works Director.
9. Provide for construction and installation, when determined appropriate by the Public Works Director, of all public street improvements and on-site vehicular access facilities as described in pages 2.2.33 to 2.2.35 of Revised Draft EIR No. 10129 for the "Fresno 40 Development Project" dated July 2004.
10. The developer shall agree to indemnify, hold harmless, release and defend the City of Fresno and the Fresno City Council from any action against the City of Fresno and the Fresno City Council.

CONCLUSION / RECOMMENDATION

The Fresno 40 property is one of the most prominent vacant properties in the City of Fresno. This is due to the relatively large size of the site and the fact that it is located in an area that could be categorized as the main entry point or "throat" to the Woodward Park area. The unique location of the site makes it a transitional property between the primarily residential area to the north and east and the extensive office and retail development to the west and south as well as the "Riverpark" retail complex on the west side of Freeway 41.

As discussed earlier in this report, there has been a rather long history of proposals for development of the Fresno 40 property. This latest proposal for development has been in process in one form or another since year 2000. Since that time there have been a number of meetings involving neighboring property owners and concerned citizens regarding this project. Through these discussions, there have been two consistent themes expressed by the concerned citizens regarding the development of this property. The first concern has been that the site be developed as one unified project by one developer. The second issue relates to traffic circulation. The traffic concerns relate both to how the added traffic from the project would affect the already existing traffic congestion problems on adjacent major streets and that the proposed access points to the project be designed and located in a manner that is sensitive to surrounding properties as well as the Sugar Pine Trail.

Since the applicant has now purchased the entire site and is proposing to develop the entire site, the first concern of the neighbors appears to be resolved. To further ensure that the site is developed in a unified manner staff is recommending a condition of approval that would require a master conditional use permit be approved for the entire site, before any development of the site is permitted.

In regard to the second issue of concern, traffic is the central issue as related to the existing high volumes of vehicular traffic that utilizes the adjacent major streets. This issue is of special concern at the AM and PM peak hours of travel. As a result, it is critical that the uses on the subject property be uses that are not typically peak hour traffic generators. For this reason staff is recommending that a traditional supermarket not be permitted on the site. A supermarket tends to attract motorists as they are driving to and from work or other destinations for a relatively short period. These added traffic movements would serve to add further congestion and cause additional "friction" on the movement of traffic on the already overburdened adjacent major streets.

Conversely, if the retail portion of the project were developed with uses that tend to not be peak hour traffic generators (i.e., specialty shops, clothing stores, specialty food stores, etc.), the project would actually generate significantly less peak hour trips than if the entire site were developed with the office uses as currently allowed.

Due to the current traffic congestion problems on Friant Road, staff is also opposed to allowing a second access point from this project onto Friant Road. Segments of Friant Road, adjacent to the subject property, are currently operating at an unacceptable level of service and are projected to remain at an unacceptable level in the year 2025. The existing conditions of zoning on the property, which were established in 1990, limited the site to having one access point to Friant Road and the traffic conditions on Friant Road have not improved since that time.

Staff is also recommending conditions requiring landscaping and earth berms along Audubon Drive to address concerns from property owners within the single family residential neighborhood to the north across East Audubon Drive. There is also a condition prohibiting any vehicular crossings of the Sugar Pine Trail.

The above recommended conditions of approval, which are resultant from the EIR process and meetings with neighbors and concerned citizens, are intended to sufficiently control the development of the property at the time a formal application is submitted. It is staff's position that the above-noted conditions of approval will ensure that the development of the site is accomplished in a unified manner which is sensitive to the surrounding properties and the adjacent circulation system.

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the 2025 Fresno General Plan and the Woodward Park Community Plan; its compatibility with surrounding existing or proposed uses; and, its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by accompanying Environmental Impact Report No. 10129. Upon consideration of this evaluation, it can be concluded that the proposed Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 are appropriate for the project site, subject to the conditions of approval recommended above. This recommendation includes approval of the plan amendment and rezone application for the southerly portion of the site proposing community commercial land uses and C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*) zoning.

1. RECOMMEND TO THE CITY COUNCIL CERTIFICATION of the Final Environmental Impact Report No. 10129 (SCH No. 2001021030), dated September 2004.
2. RECOMMEND APPROVAL TO THE CITY COUNCIL of Plan Amendment Application No. A-00-23 proposing to amend the 2025 Fresno General Plan and Woodward Park Community Plan to change the planned land uses of the project site as shown on attached **Exhibit A**.
3. RECOMMEND APPROVAL TO THE CITY COUNCIL of Rezone Application No. R-00-52 to rezone the subject property from the R-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) and C-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*) zone districts to the C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*) zone district as shown on attached **Exhibit A** subject to the conditions of approval noted above.

K:\Common\Master Files - 2000\Plan Amendments\A-00-23, R-00-52 EIR No. 10129\A-00-23,R-00-52 Fresno 40 RPC 11-17-04.doc

Attachments: Vicinity Map

Aerial Photograph of Site (2002)

Proposed Land Use/Zoning Map (**Exhibit A**)

Woodward Park Plan Land Use Map (**Exhibit A-1**)

Conceptual Site Plan (**Exhibit B**)

Activity Center/Intensity Corridor Map from 2025 Fresno General Plan (**Exhibit 6**)

Draft Final Environmental Impact Report No. 10129, dated September 2004,
including Written Responses to Comments, dated September 2004, and
Draft EIR dated July 2004

(previously distributed to the Planning Commission)

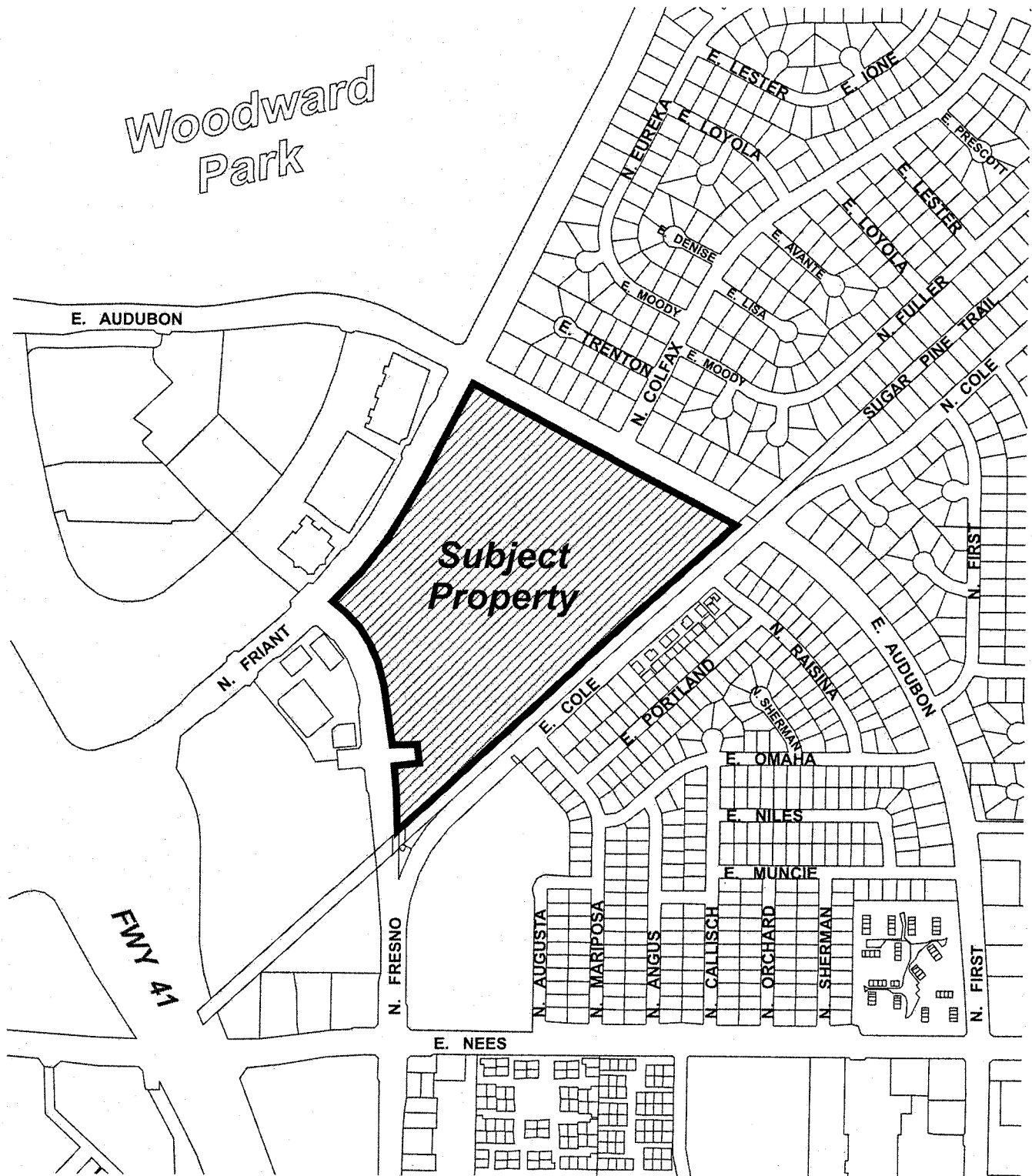
Letters from Caltrans dated October 15, 2004, and October 26, 2004
(including Letter from DeWayne Zinkin, dated October 20, 2004)

Letter from Coalition for Community Trails, dated October 18, 2004

Draft Planning Commission Resolutions for

- EIR No. 10129 (SCH No. 2001021030)
- Plan Amendment Application No. A-00-23
- Rezone Application No. R-00-52

Woodward
Park



VICINITY MAP

DRAFT EIR NO. 10129

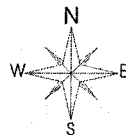
PLAN AMENDMENT NO. A-00-023

From Office Commercial to Community Commercial

REZONE APPLICATION NO. R-00-052

From C-P/UGM/cz & R-P/UGM/cz to C-2/UGM

Btwn Audubon, Fresno, Cole and Friant



NOT TO SCALE

PLANNING & DEVELOPMENT DEPARTMENT

A.P.N.: 418-060-30

ZONE MAP: 1950

BY/DATE: J.S. / 7-12-04

2002 AERIAL PHOTOGRAPH OF SUBJECT SITE (FRESNO 40)

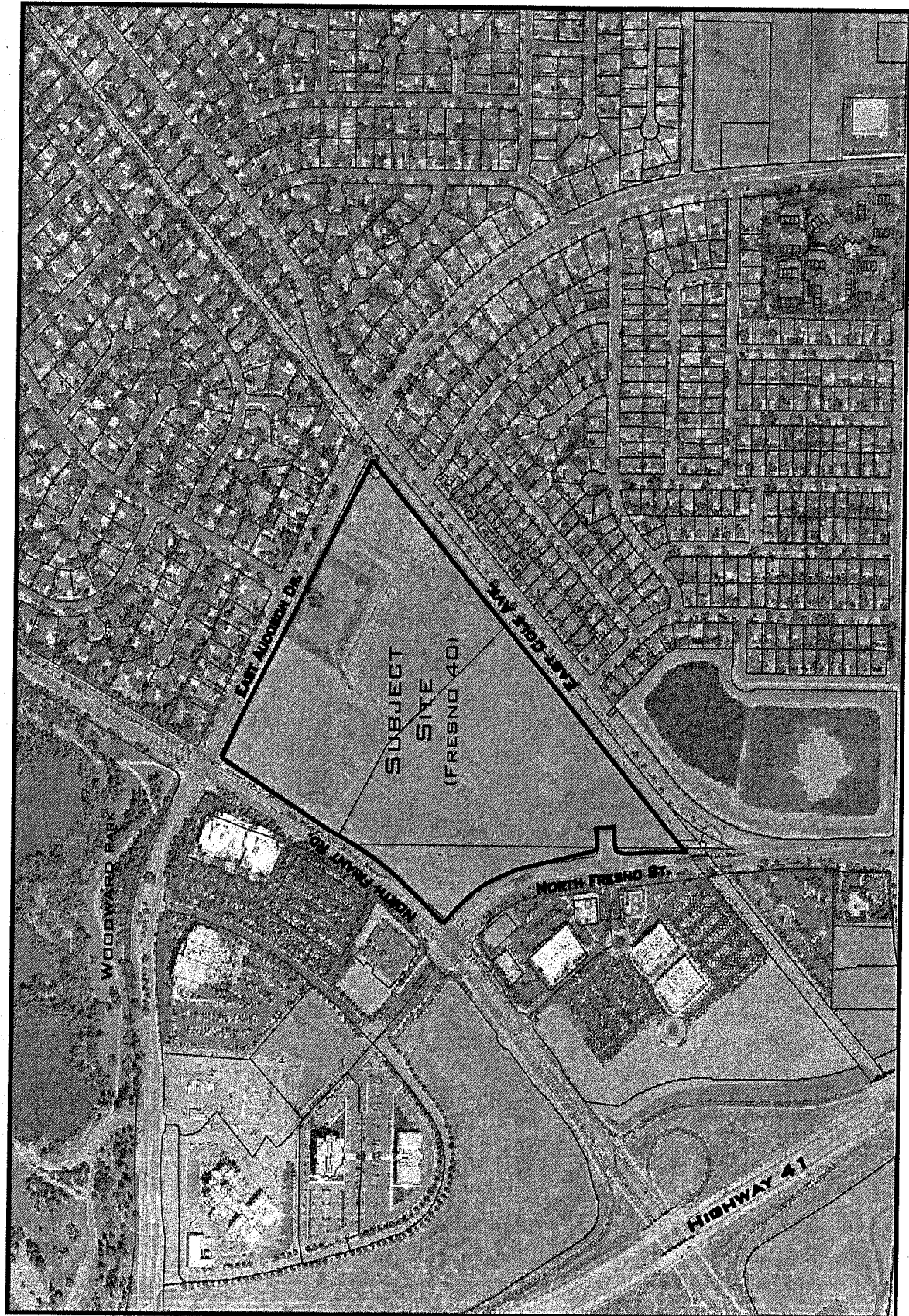
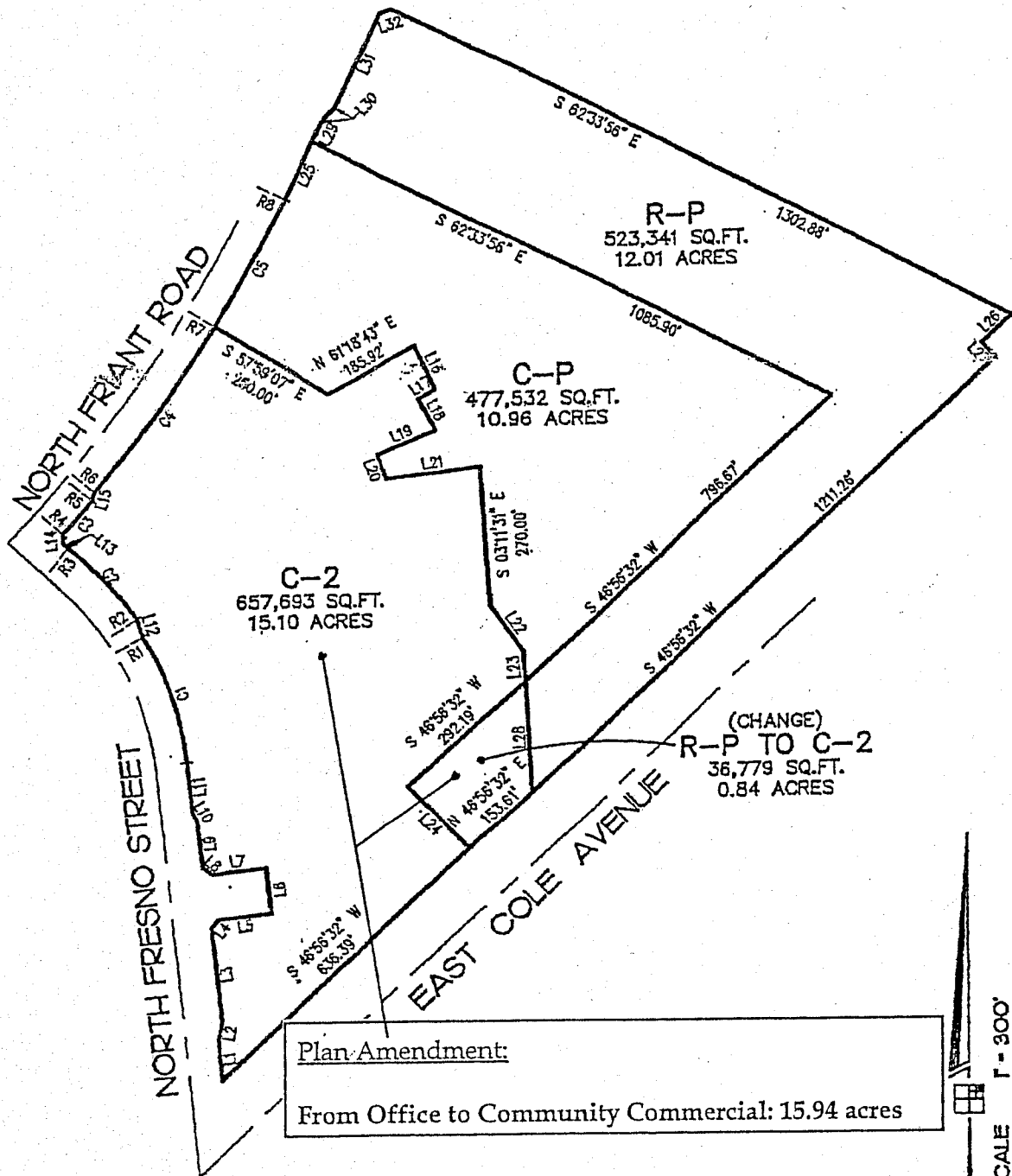


EXHIBIT A

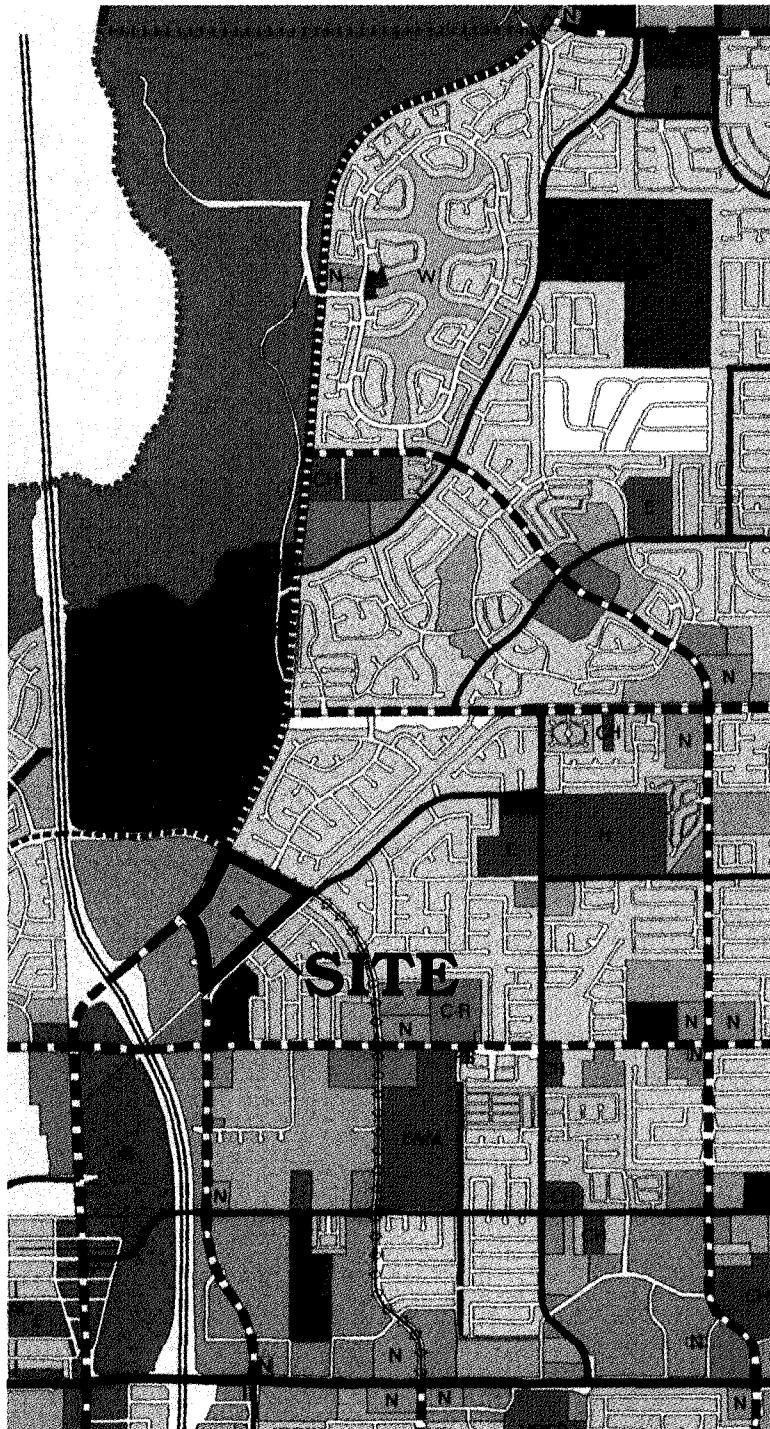


Plan Amendment:
 From Office to Community Commercial: 15.94 acres



EXHIBIT A-1

Woodward Park Plan Area



Copper

Behymer

Shepherd

Teague

Nees

Alluvial

Herndon

LEGEND

RESIDENTIAL

- Low
- Med Low
- Medium
- Medium High
- High

COMMERCIAL

- Parking
- Office
- Neighborhood
- Limited Neighborhood
- Community
- Commercial-Recreational
- Commercial-Recreational
- Special
- Business Park
- Regional

Blackstone

Highway 41

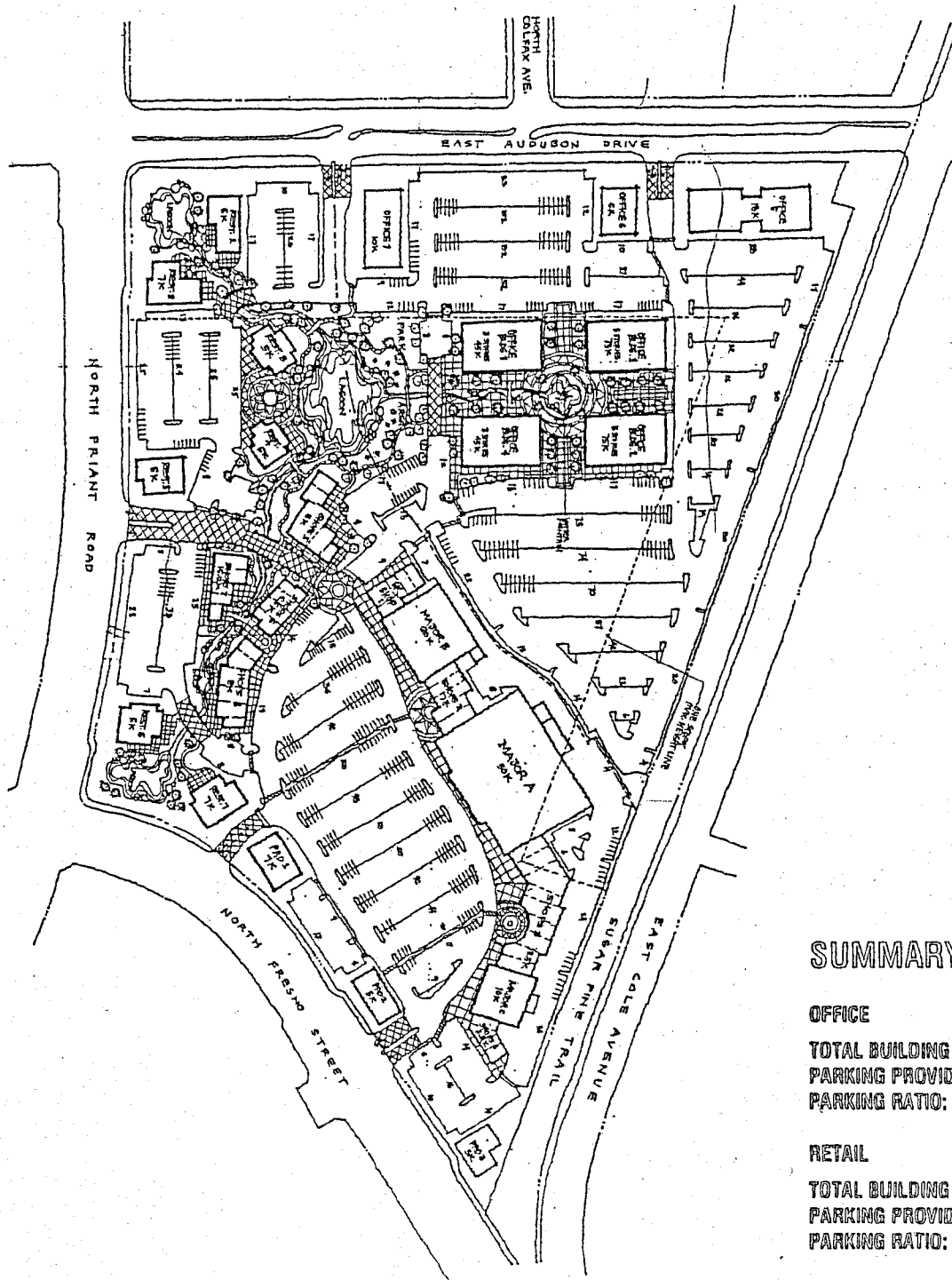
Fresno

First

Millbrook

Cedar

EXHIBIT B



SUMMARY

OFFICE

TOTAL BUILDING AREA: 274,000 S.F.
 PARKING PROVIDED: 1122 STALLS
 PARKING RATIO: 4.1/1000

RETAIL

TOTAL BUILDING AREA: 203,000 S.F.
 PARKING PROVIDED: 1063 STALLS
 PARKING RATIO: 5.20/1000

DATE: SEPTEMBER 3, 2013
 MODEL NO. 41 02133.00

1190 E. BURNETT DR., FORT WORTH, TEXAS 76104
 LISA J. HARRIS, CA. 00012
 T. 817. 874. 2100 F. 817. 874. 5182
 WWW.MADLARC.COM

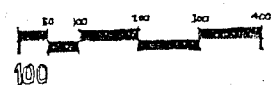
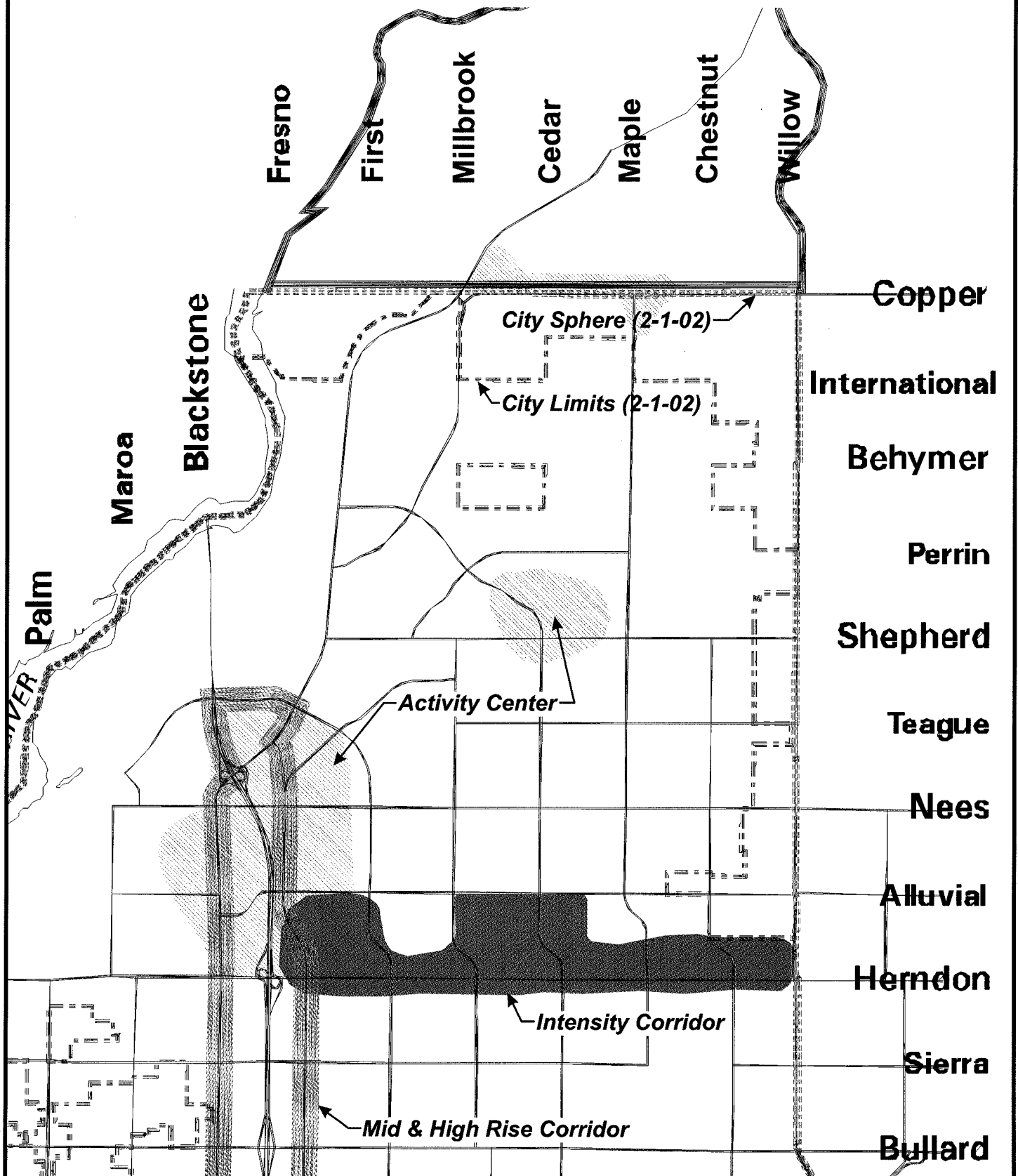


EXHIBIT 6

2025 Fresno General Plan



DEPARTMENT OF TRANSPORTATION

1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA 93778-2616
PHONE (559) 445-6666
FAX (559) 488-4088
TTY (559) 488-4066



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Be energy efficient!*

RECEIVED

October 15, 2004

OCT 18 2004

Planning Division
Development Department
CITY OF FRESNO

2131-IGR/CEQA
6-FRE-41-31.6+/-
FRESNO 40, DEIR #10129
SCH # 2001021030

Mr. David Braun
City of Fresno Development Department
2600 Fresno Street
Fresno, CA 93721

Dear Mr. Braun:

We have completed our review of the Response to Comments document for the Fresno 40 DEIR. The development is bounded by North Friant Road on the west, North Fresno Street on the south, East Cole Avenue on the east, and East Audubon Drive on the north. Caltrans has the following comments:

RESPONSE #1

The project should only be responsible for a portion of the auxiliary lane or that section that would begin at the intersection of the southbound ramp/mainline. The project should not be responsible for any of the off-ramp improvements at Herndon since project trips are not exiting at that interchange.

Caltrans comments on the DEIR recommended that the project pay a pro rate fair share of \$445,817 to mitigate for project-related traffic impacts to State facilities. This value was based on the known need for future improvements to four State facilities (southbound auxiliary lane, southbound off-ramp, northbound on-ramp from eastbound Friant Road, northbound on-ramp from westbound Friant), the calculated cost-per-trip for impacts to these facilities, and the number of project trips that would impact these facilities. The applicant's traffic consultant appears to concur with the Department regarding the four facilities that would be impacted and the number of project trips that would impact these facilities. The consultant also appears to concur with the Department's calculated cost-per-trip for three of the facilities (southbound off-ramp, northbound on-ramp from eastbound Friant Road, northbound on-ramp from westbound Friant); however, the consultant does not appear to entirely concur with the Department's calculated cost-per-trip for impacts to the southbound auxiliary lane from Friant Road to Herndon Avenue. The consultant argues

that the project trips do not impact the entire auxiliary lane since none of the trips exit the freeway at Herndon Avenue.

This Office concurs with the applicant's traffic consultant that since none of the project trips exit at Herndon Avenue, the proposed development should mitigate its impacts to only the southbound on-ramps and one-half of the southbound auxiliary lane. However, during the process of recalculating the cost-per-trip for impacts to the southbound auxiliary lane, it was discovered that the auxiliary lane cost-per-trip calculations were done prior to April 2003 and the cost-per-trip calculations for the other three facilities were done after April 2003. The calculations done after April 2003 were based on data from the traffic model.

The calculations done prior to April 2003 were based on existing ramp census data and forecasted volumes derived from historical growth rates. The recalculated cost-per-trip for impacts to the southbound on-ramp from eastbound Friant Road and half of the southbound auxiliary lane would be \$7,137, based on data from the traffic model. If existing ramp census data and forecasted volumes derived from historical growth rates are used, then the cost-per-trip would be only \$1,673. This is based on an historical growth rate of 2.6%. The reason for this significant difference is that the forecasted volumes based on historical growth rates are significantly greater than the forecasted volumes from the model. This in turn results in a much larger denominator when calculating the percentage of a single trip. Please see Attachment Number 1 that details both methods.

Caltrans considered the higher \$7,137 cost per trip, but determined that the lesser amount, \$1,673, was more equitable.

½ of the Southbound aux from Friant to Herndon	\$1,673/trip(w/off-ramp improvements)
Southbound off-ramp to Friant	\$834/trip
Northbound on from eastbound Friant	\$757/trip (w/300m aux-lane)
Northbound on from westbound Friant	\$1,311/trip (w/300m aux-lane)

Trips per Demand Movement (see attached Figure 3):

Southbound aux from Friant to Herndon =	21 + 136 = 157 trips
Southbound off-ramp to Friant =	1 + 13 = 14 trips
Northbound on from eastbound Friant =	1 trip
Northbound on from westbound Friant =	24 trips

Mitigation

Southbound aux from Friant to Herndon = (157 trips)(\$1,673/trip) =	\$262,661
Southbound off-ramp to Friant = (14 trips)(\$834/trip) =	\$ 11,676

Northbound on from eastbound Friant = (1 trip)(\$757/trip) =	\$ 757
Northbound on from westbound Friant = (24 trips)(\$1,311/trip) =	\$ 31,464
Total = \$306,558	

Caltrans therefore calculates (based on information provided in the applicant's traffic study) this project's pro rata fair share to mitigate for cumulatively significant project-related impacts to be **\$306,558**. Please have the applicant contact this office so that we may complete the necessary deferment agreement.

Caltrans needs to identify the per trip costs and methodology applied to derive the per trip fee for the various improvements.

See the following attached worksheets from our Traffic Engineering Office.

½ of the Southbound aux from Friant to Herndon	Attachment Number 1
Southbound off-ramp to Friant	Attachment Number 2
Northbound on from eastbound Friant	Attachment Number 3
Northbound on from westbound Friant	Attachment Number 4

RESPONSE #2

At the time the property was rezoned from residential to office uses, the freeway and associated interchanges were not yet constructed and the design of these state facilities should have incorporated existing zoning.

The process of building a freeway takes a considerable amount of time, sometimes decades. The construction schedule (Attachment Number 5, page 3) for the State Route 41 extension (including the Friant Road interchange) began in 1979 with the Environmental Impact Report, completed in 1984. At the conclusion of the environmental stage, the design of the freeway, based on the "best alternative" was started. Design required 3-1/2 years, and was completed in 1987. At the completion of the design phase, the project was advertised and a bid accepted. The section of State Route 41 from Bullard Avenue to just north of Audubon Drive was completed in 1989, with opening ceremonies on June 9, 1989 (Attachment Number 5, pages 1 and 2).

The Response to Caltrans comments indicates that we should have taken the existing zoning into consideration at the time we designed the interchange. Please note; this application is to rezone a portion of the property. The remaining property, according to the DEIR, was rezoned in 1990 by Valley Children's hospital, a year after the extension of the freeway was completed. It may have been rezoned at a previous time as well, but this only serves to demonstrate how difficult it is for Caltrans to keep pace with the City's General

Plan and Rezoning changes. Caltrans bases our facility designs on the General Plans of the local jurisdictions. Caltrans has stated many times that the City's General Plan is a very fluid document, undergoing constant amendment. Our design for the Friant Road interchange, initiated in 1984, would have been based on the City's 1984 General Plan.

The Woodward Park Community Plan (Page 10, December 1989, section unchanged in 2025 update; Attachment Number 6) states that:

"Circulation. The Woodward Park area's circulation system would be designed to direct traffic away from North Cedar Avenue towards three points: (1) the future Freeway 168; (2) Herndon Avenue and Freeway 41 (3) Friant Road and Freeway 41."

This suggests that the City's circulation system is designed to reduce congestion on City streets at the expense of the State Highway System. It also tends to counter the City's contention that the traffic on the freeway system is regional in nature. Clearly, a significant amount of the congestion is due to local traffic.

RESPONSE #3

Caltrans should not abdicate the responsibility for calculating development costs and fees to another agency that is not legally responsible for the improvements.

Caltrans is not abdicating responsibility for calculating the pro rata fair share. Ideally, the TIS, as part of the EIR, needs to calculate mitigation for the project's impacts to the transportation/circulation system. As it was not, we utilized the TIS to determine the number of project-related trips that would impact the interchange and calculated a pro rata fair share based on our estimated project costs, existing and projected traffic, etc. (see our response to Number 1).

The City believes that through the preparation of the required nexus analysis and development of an MOU or other acceptable method, a fee could be implemented in a manner that affords Caltrans fair share funds to mitigate traffic impacts created by specific developments in the Fresno area while setting forth a revenue stream that would be consistent with the Mitigation Fee Act and be legally defensible.

The TIS prepared for the project identified impacts to State facilities. The TIS is part of the environmental document prepared for the City of Fresno to support this project. The TIS is the City's nexus study and therefore represents the "required nexus analysis." The City will use this study to require mitigation to local facilities. Caltrans fails to understand why the

City believes that a legally defensible nexus for mitigation to the State Highway System has not been established.

We believe the City is confusing the Mitigation Fee Act with project mitigation under the California Environmental Quality Act (CEQA). However, as this is a concern for the City, Caltrans provides the following to address the Mitigation Fee Act:

The California Government Code section 66000-66008 (Mitigation Fee Act) does not allow local agencies to collect mitigation fees without certain requirements being met under statute:

1. In establishing an impact fee, the city or county must:

a) Identify the purpose of the fee.

The purpose is to mitigate for identified project-related impacts to State facilities. The City's own environmental document demonstrated that project traffic will impact an identified State facility. Caltrans has planned improvements to that facility to alleviate the impact project-related traffic generated by the City of Fresno's land use decisions. This project will contribute to the impacts on the interchange and should therefore provide a pro rata fair share to reduce its impact to a level less than significant (per CEQA).

b) Identify the use to which the fee is to be put.

The mitigation is to be used for capacity-enhancing/operational/safety improvements to the SR 41/Friant Road interchange. We understand that at a Council hearing a Council member raised the concern regarding how Caltrans accounts for the collected money and whether it is used elsewhere in the State rather than for mitigation at the local level. When collecting money for mitigation, Caltrans sets up an account that allows the money to be tracked and then applied to the identified improvement on the identified interchange at the time a construction project is proposed. Funds collected to mitigate at one location is used solely for that purpose and not used elsewhere in the system. This information has been provided to City staff numerous times.

c) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

The City's TIS prepared for this project demonstrated the relationship of the project-generated traffic to the impact on the interchange. We have notified the City numerous times that the accumulated traffic impacts created by development in this region of Fresno would create impacts to the interchange. Because of these project-related impacts, and the

City's land use decisions, Caltrans has initiated an improvement project at SR 41/Friant Road. This project will contribute to the impacts on the interchange and should therefore provide a pro rata fair share to reduce its impact to a level less than significant (per CEQA).

- d) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

The efficient operation of the public facility, the State Route, is needed to provide a safe and efficient movement of people and goods throughout the State and to minimize air quality impacts that would occur from project-related traffic congestion. As noted elsewhere in this letter, the City is directing traffic to the freeway system to reduce traffic impacts to the local street system. Therefore, the efficient operation of the State Highway System is also essential to provide the safe and efficient movement of people throughout the City of Fresno.

2. The fee revenue must be segregated from the general fund in order to avoid commingling of capital facilities fees and the general fund.

We believe the City has been able to accomplish this with the City's UGM fees. However, if it is an issue, Caltrans will accept and hold the money. Please see 1.b) for an overview of Caltrans procedures for accepting mitigation.

3. If the city or county has had possession of a developer fee for five years or more, and has not committed that money to a project or actually spent that money, then it must make findings describing the continuing need for that money each fiscal year after the five years have expired.

Caltrans assumes the City is doing this for the UGM fees. Please note however, that the requirement does not apply to the State. Should the City wish Caltrans to collect the mitigation, we are not subject to the same five-year limit.

4. If the city or county cannot make the findings required under paragraph 3, then the city or county must return the collected fees with interest.

Please see the response above.

We believe our comments meet the requirements of California Code Government Code section 66000-66008 (Mitigation Fee Act). Furthermore, it is common practice throughout the State of California for a Lead Agency to require mitigation for State Highways as a condition of project approval through the entitlement process.

Caltrans has not identified how any of its proposed per trip fees were established.

See attached worksheets (Attachment Numbers 1 - 4) from our Traffic Engineering Office.

What cost estimate for improvements did Caltrans apply to derive the per trip fee?

See attached worksheets (Attachment Numbers 1 - 4) from our Traffic Engineering Office.

What growth in trips did Caltrans apply to determine the per trip fee once the improvement costs were identified?

Caltrans utilized the historical growth rate of 2.6%. Please see the our response to "Response Number 1" that explains why we did not use the model forecasted volume.

Is \$2,813,440 the total cost of the auxiliary lane/Herndon Avenue off-ramp improvements?

No. Total cost for this portion of the interchange improvements is \$11,640,000.

Are there other trips considered by Caltrans that would share responsibility for the improvement project and result in a higher improvement cost?

Caltrans has requested mitigation in the form of pro rata fair share from all development projects we believe will impact the interchange. We have consistently received this mitigation from projects that are being processed through Fresno County. We have received only a portion of the mitigation requested from projects processed through the City's Development Department. Ideally, all development that impacts the facility would share in the responsibility for mitigating those impacts. Historically, that has not been the case.

We do not expect an increase to the cost of the improvement, other than right-of-way acquisition costs increasing due to the local jurisdiction allowing development within the footprint of the planned improvement.

RESPONSE #4

By letter, the developer's representative offered \$37,500 which was verbally rejected by Caltrans staff.

Please be advised that Caltrans never "verbally rejected" the \$37,500 in mitigation for Mr. Zinkin's earlier project located on North Fort Washington and Friant Roads. It is the

consistent practice of this office to document such conversations with a follow-up letter to both the City and the applicant. Had we rejected the offer, there would be written correspondence to verify this. Furthermore, we have continued to request on every subsequent application for the project site that the applicant provide the \$37,500 to mitigate for impacts created by the original rezone. This is the first response we have had from either the City or the applicant. This statement in the EIR is false and inaccurate.

RESPONSE #5

As a result of the above analysis and the City and Caltrans agreement on the trip reduction methodology, the calculated maximum daily trip generation of 12,400 daily trips is consistent with professional traffic engineering practices and is not expected to be exceeded.

Caltrans does not dispute the trip reduction percentages. Our concern on this issue was not on the technical analysis itself but on the fact that the site has a cap on the ADT that can be generated by this project. The project only marginally meets this restriction and only with the trip reduction percentages calculated into the trip generation. Considering how close the project comes to reaching the cap, Caltrans requested information on how the City would monitor the traffic.

RESPONSE #6

Counting the actual number of trips has not been required by the City for other projects that have a maximum trip cap.

Please provide the locations of other projects that have a maximum trip cap. Caltrans has received conflicting information from the City regarding these trip caps. A former Planning Manager has told us on several occasions that the limit on the ADT applied to all development within this region of Fresno. Since that time, we have been told that only two parcels had conditions of zoning that limited the maximum trip generation. Caltrans has just received a map that delineates the boundary of "Assessment District 100" (Attachment Number 7). This parcel is within that District. We believe this District may include ADT limitations on all of the parcels within the boundary. We are in the process of trying to obtain information on the District and may have additional comments at the public hearing for this project regarding the overall traffic situation within the boundaries of Assessment District 100.

The City will require that all site plans, use permits, and variances are consistent with the project description contained in the traffic study and that additional traffic analysis be conducted as necessary.

Caltrans concurs with conducting additional traffic analysis on subsequent projects when such analysis is warranted. Please provide us with an opportunity to review and comment on the scope as well as the final study for any additional traffic analyses.

According to the City's Development Director, additional mitigation could be required of the developer if additional traffic analysis indicates that the traffic cap is being exceeded.

Caltrans concurs with this response.

RESPONSE #7

The writer is incorrect. Inclusion of the project into an Activity Center is not a mitigation measure in the DEIR. The site was added to the Woodward Park activity center by the 2025 General Plan in recognition of the sites' relationship to other surrounding commercial, employment, and cultural uses.

Response noted.

RESPONSE #8

Grand Openings are no typical of "average daily traffic conditions", which must be analyzed in the traffic study.

Again, our concern with this issue was not on the technical analysis itself but on the fact that the site has a cap on the ADT that can be generated by this project. The project only marginally meets this restriction and only with the trip reduction percentages calculated into the trip generation. Considering how close the project comes to reaching the cap, we used this as an example of how easily the cap could be exceeded and should be a concern to the City of Fresno as well.

The City may require temporary permits for special events and could include conditions of approval including the requirement for traffic control by the applicant.

Caltrans concurs with this response.

RESPONSE #10

The Air Quality Impact Assessment prepared to assess the impacts of the project used defaults including "mean" temperature provided in the URBEMIS and CALINE Programs as suggested by the State and the District.

Response noted.

RESPONSE #11

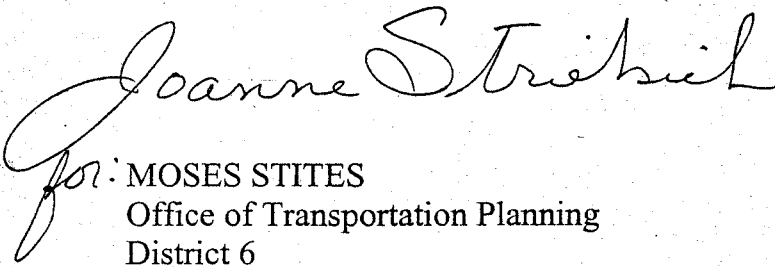
The Air Quality Impact Assessment addressed the impacts of the project on the ozone exceedance through the analysis of regional mobile source emissions using URBEMIS.

Response noted.

We request that this letter be made a part of the permanent record for this project and that a copy of our letter be included in the staff reports for both the City Council and the Planning Commission. This will provide the decision-making body and the general public with a complete and accurate environmental evaluation for the project.

Please send a copy of the staff report(s) to Caltrans prior to any scheduled hearings for this item. If you have any questions, please call me at (559) 445-6666.

Sincerely,



for: MOSES STITES
Office of Transportation Planning
District 6

Enclosures

- C: Mr. Bruce O'Neal, Land Use Associates
Ms. Georgianna Vivian, VRPA Technologies
Mr. Richard Fairbank, Attorney at Law
Mr. Scott Morgan, State Clearinghouse
Ms. Barbara Goodwin, Executive Director, Council of Fresno County Governments

DEPARTMENT OF TRANSPORTATION

1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA 93778-2616
PHONE (559) 445-6666
FAX (559) 488-4088
TTY (559) 488-4066

RECEIVED

OCT 28 2004

Planning Division
Development Department
CITY OF FRESNO



*Flex your power!
Be energy efficient!*

October 26, 2004

2131-IGR/CEQA
6-FRE-41-31.6+/-
FRESNO 40, DEIR #10129
SCH # 2001021030

Mr. David Braun
City of Fresno Development Department
2600 Fresno Street
Fresno, CA 93721

Dear Mr. Braun:

Caltrans has received a letter from the applicant's representative (copy enclosed) for the project known as the "Fresno 40," bounded by North Friant Road on the west, North Fresno Street on the south, East Cole Avenue on the east, and East Audubon Drive on the north.

The applicant's representative has offered Caltrans \$100,000 as mitigation for impacts to the State Highway System for developments on the following four properties, payable at the time of development:

1. Fresno 40 (Friant, Audubon, Cole and Fresno);
2. Loop Property (State Route 41, Friant Road, River Park Drive);
3. River View Centers (Friant and Fort Washington); and
4. Fresno/Nees (State Route 41 and Fresno Street, south of El Paso).

Caltrans has not reviewed all of these projects, and cannot determine what impacts would be created by those projects we have yet to review. Accepting this mitigation without identifying specific impacts would violate at least the spirit of CEQA. We must therefore decline the offer.

The applicant's representative also seems to have confused the Mitigation Fee Act with mitigation identified in a project's environmental document as per CEQA. The Mitigation Fee Act in essence, provides a lead agency the ability to demonstrate a type of nexus by making the findings required by this Act. The Fresno 40 EIR identified impacts to the State Highway System and therefore has demonstrated the nexus as per CEQA.

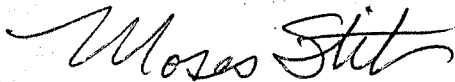
Mr. David Braun
October 26, 2004
Page 2

Caltrans has requested "ad hoc" mitigation, supported by the nexus (Nollan) identified in the project's EIR and has calculated a pro rata fair share or proportionality (Dolan). In *Ehrlich v. City of Culver City, supra*, the California Supreme Court determined that Nollan/Dolan, a "higher scrutiny test" is applicable to impact fees done on an individual ad hoc basis in a discretionary permit granting process. Further, the court held that for ad hoc fees, the Nollan/Dolan test applies to monetary exactions as well as dedications of property.

We request that this letter be made a part of the permanent record for this project and that a copy of our letter be included in the staff reports for both the City Council and the Planning Commission. This will provide the decision-making body and the general public with a complete and accurate environmental evaluation for the project.

Please send a copy of the staff report(s) to Caltrans prior to any scheduled hearings for this item. If you have any questions, please call me at (559) 445-6666.

Sincerely,



MOSES STITES
Office of Transportation Planning
District 6

Enclosure

C: Mr. Bruce O'Neal, Land Use Associates
Ms. Georgienna Vivian, VRPA Technologies
Mr. Richard Fairbank, Attorney at Law
Mr. Scott Morgan, State Clearinghouse
Ms. Barbara Goodwin, Executive Director, Council of Fresno County Governments

LAW OFFICES OF
DEWAYNE ZINKIN
2377 WEST SHAW AVENUE, SUITE 112
FRESNO, CALIFORNIA 93711
Telephone: (559) 224-8100
Facsimile: (559) 224-8111

DEWAYNE ZINKIN
ATTORNEY AT LAW

RICHARD L. FAIRBANK
ASSOCIATE

RECEIVED
October 20, 2004

OCT 25 2004

Via Facsimile (559) 488-4088
& First Class Mail

DEPT OF TRANSPORTATION DIST 6
TIME: 2:45 PM
ATTENTION: _____

Mr. Moses Stites
Caltrans Dept. of Transportation
District 6
1352 W. Olive Avenue
Fresno, California 93778

RE: Fresno 40

Dear Mr. Stites:

I have had an opportunity to meet with the Owners of the Fresno 40 and to update them on our discussion concerning Caltrans's request for fees to mitigate impacts upon the interchange.

As I have previously discussed with you, it is the Owners position that they are in fact reducing the impacts upon the interchange by rezoning a portion of the property to retail use, which will have a substantial reduction in A.M. and P.M. peak hour traffic. To develop the 40 acres all in offices would be much less desirable.

The owners believe that any required mitigation should be proportional to impacts created, if any. They do not believe they are creating any new impacts, but, in fact, that the development will reduce traffic below what could have been expected when the interchange was designed, constructed and funded. Since there has not been a nexus study for the interchange, what fees, if any, could possibly be justified is a difficult subject to discuss. I personally believe that the fee that Caltrans has requested is not only not proportionate to the project, but fails to consider that a good portion of the cost incurred by Caltrans should be borne from general funds of the state derived through taxes already imposed, and that a portion of the cost is required due to current and existing deficiencies which are unrelated to new development in the area. In addition, a significant portion of the cost of the project is related to changes to the interchange, which are unrelated to the future development of the

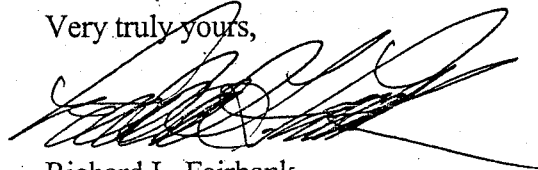
Fresno 40. We are of the opinion that no fee for mitigation is due, and certainly no requested fee has been supported by a nexus study.

However, notwithstanding the fact that the Owners do not believe that they are required or obligated to pay any fee whatsoever and believe that they are in fact substantially improving the impact upon the interchange through the zone and plan amendment, the Owners are prepared to make a settlement proposal of a global nature to Caltrans to resolve any mitigation issues related to the Fresno 40 as well as the other properties in the area owned by them. These properties include: (i) the Fresno 40 (Friant, Audubon, Cole and Fresno Street); (ii) what is commonly referred to as the "Loop Property," consisting of approximately 28 acres along River Park Drive (bounded by Freeway 41 on the west, Friant Road on the south and River Park Drive to the North); (iii) the River View Centers (consisting of the retail and office centers constructed at the northeast corner of Friant and Fort Washington); (iv) the "Fresno/Nees" property (consisting of approximately 14 acres located between Freeway 41 and Fresno Street south of Nees and north of El Paso); and (v) the "Fresno/El Paso Property" (consisting of approximately 2 acres between Freeway 41 and Fresno Street, south of El Paso). They are prepared to offer the sum of One Hundred Thousand Dollars (\$100,000) as a comprehensive resolution of any issues concerning mitigation relating to all of the above described properties payable prorata as development occurs. In my opinion there is no sum owing and therefore this is an extremely generous offer to Caltrans.

This offer will remain open until 5:00 p.m. Friday, October 22, 2004, and will automatically be revoked and have no further force and effect unless accepted in writing on before that date and time.

Should you have any questions regarding any of the foregoing, please do not hesitate to call.

Very truly yours,



Richard L. Fairbank
Attorney at Law

RLF:gl

10/18/04

[CCT] COALITION FOR COMMUNITY TRAILS
PO BOX 1313
CLOVIS, CA 93613

RECEIVED

David Braun, Planner
City of Fresno
2600 Fresno Street
Fresno, Ca 93721-3604

OCT 20 2004

Planning Division
Development Department
CITY OF FRESNO

Dear Mr Braun:

This letter is responding to the Revised Draft EIR #10129, specifically to the finding published for mitigating the significant impact finding with regard to inherent land use conflicts to the Sugar Pine Trail.

Under mitigation item 2, the report states "The trail crossing with Fresno Street shall be monitored for user safety. As conditions warrant, crossing safety devices shall be installed by the developer, including but not limited to enhanced pavement, safety cross walk painting, or pedestrian signalization."

This is a very generic statement with no defined parameters. At the very least, pedestrian signalization should be installed by the developer. Preferably, a grade separation ought to be provided by the developer utilizing either an underpass or an overpass for the trail users. This is a very dangerous mid block crossing where traffic is rolling at speed limit through the crossing and oncoming vehicles are difficult to spot due to the median landscaping and the fact that the trail crosses the street at an angle.

The underpasses installed by Lowes for the Clovis Old Town segment of this same trail is an example of what should be done by the Fresno 40 developer.

Jon Alsdorf
Chairman
Coalition for Community Trails

**FRESNO CITY PLANNING COMMISSION
RESOLUTION NO.**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF FRESNO, CALIFORNIA, RECOMMENDING TO THE COUNCIL OF THE CITY OF FRESNO THE CERTIFICATION OF ENVIRONMENTAL IMPACT REPORT NO. 10129 AS RELATED TO THE PROPOSED FRESNO 40 DEVELOPMENT PROJECT

WHEREAS, in April 1990 the Fresno City Council approved Rezone Application No. R-88-13 which, by request of Valley Children's Hospital, changed the zone district of the Fresno 40 project site located between North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive from the AE-20/UGM (*Exclusive Twenty-Acre Agricultural/Urban Growth Management*) zone district to the C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) zone district subject to several specified conditions of approval as related to the proposed hospital and office project and which conditions still apply to the office commercial planned subject property; and,

WHEREAS, DeWayne Zinkin originally filed Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 relating to the southerly 20 acres of the 40-acre Fresno 40 property located between North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive in December 2000; and,

WHEREAS, said land use entitlements were filed with the City of Fresno to amend the Fresno General Plan and the Woodward Park Community Plan from the office commercial planned land use designation to the community commercial and high density residential land use designations and amending the text of the Woodward Park Community Plan to add the 40-acre parcel to the plan activity center and rezoning the 20-acre portion of the site to the appropriate community commercial and residential zone districts; and,

WHEREAS, on April 3, 2001, the City Council adopted Resolution No. 2001-118 initiating the adoption of a new General Plan, also known as the 2025 Fresno General Plan (hereinafter, "2025 Plan"); and,

WHEREAS, the office commercial land use shown for the Fresno 40 Project on the initiated 2025 Plan is the same as originally approved by the Fresno City Council on the adopted 1989 Woodward Park Community Plan; and,

WHEREAS, the California Environmental Quality Act (CEQA) requires that an environmental impact report be prepared for any project which may have a significant effect on the environment; and,

WHEREAS, the Director of Planning and Development determined that an environmental impact report (EIR No. 10129) shall be prepared for the Fresno 40 Project including submitted Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52, and the City of Fresno contracted with a professional environmental consultant to conduct the requisite studies and analyses of the potential environmental impact and proposed mitigation measures, as applicable; and,

WHEREAS, in March 2002, the Planning and Development Department duly issued and circulated a Notice of Preparation, pursuant to CEQA Guidelines Section 15082 and Public Resources Code Section 21080.4; and,

WHEREAS, the Draft Environmental Impact Report No. 10129 assessed the proposed amendment to the southerly 20 acres of the Fresno 40 site and included review of the northern half of the site even though the northern half was owned by other parties and the proposed Final EIR for this project was ultimately not reviewed or certified in a public hearing before the Fresno City Council; and,

WHEREAS, on November 19, 2002, by Resolution No. 2002-379, the City Council adopted the 2025 Plan which correspondingly updated the 1989 Woodward Park Community Plan and by Resolution No. 2002-378 certified Master Environmental Impact Report No. 10130 which evaluated the potentially significant adverse environmental impacts of urban

development within the City of Fresno's designated urban boundary line and extended sphere of influence; and,

WHEREAS, the adopted land use of the 2025 Plan shown for the Fresno 40 Project is as initiated by the City Council on April 3, 2001, as the preferred alternative 2025 Plan; and,

WHEREAS, in September 2003, DeWayne Zinkin purchased the northern half of the 40-acre site thereby bringing the entire Fresno 40 Project under one ownership and also amended the previously submitted Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 now proposing to amend 15.94 acres of the subject property from the office commercial to the community commercial land use designation and rezoning this same portion of the property from the C-P/UGM/cz (*Community Commercial/Urban Growth Management/conditions of zoning*) and the R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*) zone districts to the C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*) zone district as shown on attached Exhibit A; and,

WHEREAS, the mixed land use project as now proposed for the entire Fresno 40 site will include approximately 274,000 square feet of office use, 203,000 square feet of retail commercial use (including a supermarket), and 20 residential dwelling units; and,

WHEREAS, in April 2004, the Planning and Development Department once again duly issued and circulated a Notice of Preparation, pursuant to CEQA Guidelines Section 15082 and Public Resources Code Section 21080.4; and,

WHEREAS, in July 2004, the Planning and Development Department staff exercising its independent judgment, completed the Draft Environmental Impact Report No. 10129 (hereinafter Draft EIR No. 10129), and the City of Fresno provided due public Notice of Availability of the Draft EIR for public comments pursuant to Public Resources Code

Section 21092 and CEQA Guidelines Section 15087; and,

WHEREAS, on July 16, 2004, the city issued a Notice of Completion pursuant to Public Resources Code Section 21161 and CEQA Guidelines Section 15085; and,

WHEREAS, on July 16, 2004, public Notice of Availability of the Draft EIR No. 10129 was posted in the office of the Fresno County Clerk pursuant to Section 15087(d) of the CEQA Guidelines; and,

WHEREAS, for at least 45 days following the date of publication of the public notices, the public was given opportunity to comment, in writing, on the adequacy of the Draft EIR as an informational document; and,

WHEREAS, at the conclusion of the minimum 45-day public review and comment period, the Planning and Development Department is required to prepare a final EIR (Final EIR No. 10129) pursuant to CEQA Guidelines Sections 15088, 15089 and 15132 and which Final EIR is to include responses to public comments on the Draft EIR; and,

WHEREAS, pursuant to Section 21092.5 of CEQA, on September 29 and October 7, 2004, the City mailed written responses to comments to all public agencies as well as private parties that commented on the Draft EIR No. 10129; and,

WHEREAS, on November 17, 2004, the Fresno City Planning Commission held a duly noticed public meeting at which the Commission considered and discussed the adequacy of the proposed Final EIR No. 10129 as an informational document, and found that the proposed Final EIR, as presented, adequately discusses the potential significant impacts of the Fresno 40 Project; and,

WHEREAS, pursuant to CEQA Guidelines Section 15132, the Final EIR No. 10129 is required to be completed in compliance with CEQA; and,

WHEREAS, the Commission has reviewed and considered the information in the Draft EIR No. 10129 as well as the proposed Final EIR prior to making a recommendation on the merits of the project.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Planning Commission hereby recommends that the Council review and consider the Final EIR No. 10129, apply the Council's independent judgment and analysis to the review, and then certify the Final EIR, as having been completed in compliance with CEQA, based on the proposed Draft EIR and comments thereon.
2. The Planning Commission finds, based on testimony presented by staff, that there are significant, unavoidable environmental impacts which have not been mitigated to a level below significant. Therefore, the Council should consider an appropriate statement of overriding considerations.
3. The Planning Commission recommends certification of the proposed Final EIR No. 10129 with all recommendations as presented by staff.

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CERTIFICATION

I, Nick P. Yovino, Secretary to the Planning Commission of the City of Fresno, certify that the foregoing Resolution was adopted by the Planning Commission of the City of Fresno at a duly noticed and regularly held meeting on the 17th day of November 2004.

AYES:
NOES:
ABSENT:
ABSTAIN:

NICK P. YOVINO
Secretary to the Planning Commission
Director of Planning and Development

By _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE _____

By _____

Resolution No.
Application No. EIR No. 10129
Filed by DeWayne Zinkin
Action: Recommend Certification

FRESNO CITY PLANNING COMMISSION RESOLUTION NO.

The Fresno City Planning Commission at its regular meeting on November 17, 2004, adopted the following resolution relating to Plan Amendment Application No. A-00-23.

WHEREAS, in April 1990 the Fresno City Council approved Rezone Application No. R-88-13 which, by request of Valley Children's Hospital, changed the zone district of the Fresno 40 project site located between North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive from the AE-20/UGM (*Exclusive Twenty-Acre Agricultural/Urban Growth Management*) zone district to the C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) zone district subject to several specified conditions of approval as related to the proposed hospital and office project and which conditions still apply to the office commercial planned subject property; and,

WHEREAS, DeWayne Zinkin originally filed Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 relating to the southerly 20 acres of the 40-acre Fresno 40 property located between North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive in December 2000; and,

WHEREAS, said land use entitlements were filed with the City of Fresno to amend the Fresno General Plan and the Woodward Park Community Plan from the office commercial planned land use designation to the community commercial and high density residential land use designations and amending the text of the Woodward Park Community Plan to add the 40-acre parcel to the plan activity center and rezoning the 20-acre portion of the site to the appropriate community commercial and residential zone districts; and,

WHEREAS, on April 3, 2001, the City Council adopted Resolution No. 2001-118 initiating the adoption of a new General Plan, also known as the 2025 Fresno General Plan (hereinafter, "2025 Plan"); and,

WHEREAS, the office commercial land use shown for the Fresno 40 Project on the initiated 2025 Plan is the same as originally approved by the Fresno City Council on the adopted 1989 Woodward Park Community Plan; and,

WHEREAS, the Director of Planning and Development determined that an environmental impact report (EIR No. 10129) shall be prepared for the Fresno 40 Project including submitted Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52, and the City of Fresno contracted with a professional environmental consultant to conduct the requisite studies and analyses of the potential environmental impact and proposed mitigation measures, as applicable; and,

WHEREAS, on November 19, 2002, by Resolution No. 2002-379, the City Council adopted the 2025 Plan which correspondingly updated the 1989 Woodward Park Community Plan and by Resolution No. 2002-378 certified Master Environmental Impact Report No. 10130 which evaluated the potentially significant adverse environmental impacts of urban development within the City of Fresno's designated urban boundary line and extended sphere of influence; and,

WHEREAS, the adopted land use of the 2025 Plan shown for the Fresno 40 Project is as initiated by the City Council on April 3, 2001, as the preferred alternative 2025 Plan; and,

WHEREAS, in September 2003, DeWayne Zinkin purchased the northern half of the 40-acre site thereby bringing the entire Fresno 40 Project under one ownership and also amended the previously submitted Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 now proposing to amend 15.94 acres of the subject property from the office commercial to the community commercial land use designation and rezoning this same portion of the property from the C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) and the R-P/UGM/cz (*Residential and Professional*

Office/Urban Growth Management/conditions of zoning) zone districts to the C-2/UGM/cz
(*Community Shopping Center/Urban Growth Management/conditions of zoning*) zone district
as shown on attached Exhibit A; and,

WHEREAS, the mixed land use project as now proposed for the entire Fresno 40 site
will include approximately 274,000 square feet of office use, 203,000 square feet of retail
commercial use (including a supermarket), and 20 residential dwelling units; and,

WHEREAS, the Commission has reviewed and considered the information in the Draft
EIR No. 10129 as well as the proposed Final EIR prior to making a recommendation on the
merits of the project; and,

WHEREAS, the Northeast Area Plan and Implementation Committee, on November 15,
2004, reviewed the requested plan amendment and made a recommendation to the Planning
Commission; and,

WHEREAS, on November 17, 2004, the Fresno City Planning Commission held a duly
noticed public meeting at which the Commission considered and discussed the adequacy of
the proposed Final EIR No. 10129 as an informational document, and found that the proposed
Final EIR, as presented, adequately discusses the potential significant impacts of the Fresno
40 Project; and,

WHEREAS, on November 17, 2004, the Fresno City Planning Commission also
considered the subject plan amendment and considered the proposed project in accordance
with the policies of the Woodward Park Community Plan and the 2025 Fresno General Plan;
and,

WHEREAS, during the above-noted public hearing, the Planning Commission
considered the staff report and related information and received public testimony with respect
to the proposed plan amendment.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Fresno City Planning Commission finds that subject to Environmental Impact Report No. 10129 and the mitigation measures contained therein and subject to the Council consideration of an appropriate statement of overriding considerations, there is no evidence in the record that significant effects on the environment have not been mitigated to the to the extent feasible.
2. The Fresno City Planning Commission hereby recommends to the City Council that the land use designation of the Woodward Park Community Plan and the 2025 Fresno General Plan be approved for the subject site in accordance with staff's recommendation as noted on Exhibit A, attached.

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CERTIFICATION

I, Nick P. Yovino, Secretary to the Planning Commission of the City of Fresno, certify that the foregoing Resolution was adopted by the Planning Commission of the City of Fresno at a duly noticed and regularly held meeting on the 17th day of November 2004.

AYES:
NOES:
ABSENT:
ABSTAIN:

NICK P. YOVINO
Secretary to the Planning Commission
Director of Planning and Development

By _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE _____

By _____

Resolution No.
Plan Amendment Application No. A-00-23
Filed by DeWayne Zinkin
Action: Recommend Approval

**FRESNO CITY PLANNING COMMISSION
RESOLUTION NO.**

The Fresno City Planning Commission at its regular meeting on November 17, 2004, adopted the following resolution relating to Rezone Application No. R-00-52.

WHEREAS, in April 1990 the Fresno City Council approved Rezone Application No. R-88-13 which, by request of Valley Children's Hospital, changed the zone district of the Fresno 40 project site located between North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive from the AE-20/UGM (*Exclusive Twenty-Acre Agricultural/Urban Growth Management*) zone district to the C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) zone district subject to several specified conditions of approval as related to the proposed hospital and office project and which conditions still apply to the office commercial planned subject property; and,

WHEREAS, DeWayne Zinkin originally filed Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52 relating to the southerly 20 acres of the 40-acre Fresno 40 property located between North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive in December 2000; and,

WHEREAS, said land use entitlements were filed with the City of Fresno to amend the Fresno General Plan and the Woodward Park Community Plan from the office commercial planned land use designation to the community commercial and high density residential land use designations and amending the text of the Woodward Park Community Plan to add the 40-acre parcel to the plan activity center and rezoning the 20-acre portion of the site to the appropriate community commercial and residential zone districts; and,

WHEREAS, on April 3, 2001, the City Council adopted Resolution No. 2001-118 initiating the adoption of a new General Plan, also known as the 2025 Fresno General Plan (hereinafter, "2025 Plan"); and,

WHEREAS, the office commercial land use shown for the Fresno 40 Project on the initiated 2025 Plan is the same as originally approved by the Fresno City Council on the adopted 1989 Woodward Park Community Plan; and,

WHEREAS, the Director of Planning and Development determined that an environmental impact report (EIR No. 10129) shall be prepared for the Fresno 40 Project including submitted Plan Amendment Application No. A-00-23 and Rezone Application No. R-00-52, and the City of Fresno contracted with a professional environmental consultant to conduct the requisite studies and analyses of the potential environmental impact and proposed mitigation measures, as applicable; and,

WHEREAS, on November 19, 2002, by Resolution No. 2002-379, the City Council adopted the 2025 Plan which correspondingly updated the 1989 Woodward Park Community Plan and by Resolution No. 2002-378 certified Master Environmental Impact Report No. 10130 which evaluated the potentially significant adverse environmental impacts of urban development within the City of Fresno's designated urban boundary line and extended sphere of influence; and,

WHEREAS, the adopted land use of the 2025 Plan shown for the Fresno 40 Project is as initiated by the City Council on April 3, 2001, as the preferred alternative 2025 Plan; and,

WHEREAS, in September 2003, DeWayne Zinkin purchased the northern half of the 40-acre site thereby bringing the entire Fresno 40 Project under one ownership and also amended the previously submitted Plan Amendment Application No. A-00-23 now proposing to amend 15.94 acres of the subject property from the office commercial to the community commercial land use designation; and,

WHEREAS, Rezone Application No. R-00-52 has been filed with the City of Fresno to rezone the property as described below:

Requested Zoning: C-2/UGM/cz (*Community Shopping Center/Urban Growth Management/conditions of zoning*) (Exhibit A, attached)

Existing Zoning: C-P/UGM/cz (*Administrative and Professional Office/Urban Growth Management/conditions of zoning*) and
R-P/UGM/cz (*Residential and Professional Office/Urban Growth Management/conditions of zoning*)

Applicant: DeWayne Zinkin

Location: Bounded by North Friant Road, North Fresno Street, East Cole Avenue, and East Audubon Drive

APN: 402-220-37, 402-220-60, 402-220-61

Legal Description: Exhibit L, attached.

WHEREAS, the mixed land use project as now proposed for the entire Fresno 40 site will include approximately 274,000 square feet of office use, 203,000 square feet of retail commercial use (including a supermarket), and 20 residential dwelling units; and,

WHEREAS, the Commission has reviewed and considered the information in the Draft EIR No. 10129 as well as the proposed Final EIR prior to making a recommendation on the merits of the project; and,

WHEREAS, the Northeast Area Plan and Implementation Committee, on November 15, 2004, reviewed the requested rezone application and made a recommendation to the Planning Commission; and,

WHEREAS, on November 17, 2004, the Fresno City Planning Commission held a duly noticed public meeting at which the Commission considered and discussed the adequacy of the proposed Final EIR No. 10129 as an informational document, and found that the proposed Final EIR, as presented, adequately discusses the potential significant impacts of the Fresno 40 Project; and,

WHEREAS, on November 17, 2004, the Fresno City Planning Commission also considered the subject rezone application and considered the proposed project in accordance with the policies of the Woodward Park Community Plan and the 2025 Fresno General Plan; and,

WHEREAS, during the above-noted public hearing, the Planning Commission considered the staff report and related information and received public testimony with respect to the proposed rezone application.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Fresno City Planning Commission finds that subject to Environmental Impact Report No. 10129 and the mitigation measures contained therein and subject to the Council consideration of an appropriate statement of overriding considerations, there is no evidence in the record that significant effects on the environment have not been mitigated to the extent feasible.
2. The Fresno City Planning Commission hereby recommends to the City Council that rezoning of the subject property be approved as shown in Exhibit A, attached.
3. The Fresno City Planning Commission hereby recommends to the City Council that the rezoning of the subject site be subject to the following conditions:

- a. Before any development is allowed, a master conditional use permit/site plan review application shall be submitted to the City of Fresno for the entire Fresno 40 office/ retail/residential mixed-use project. The master conditional use permit/site plan application shall:
 - Assure that building design, circulation, parking, and landscaping be appropriately unified and integrated. Rear and side building facades including colors, designs, textures, and materials shall be comparable to front building facades.
 - Permit residential uses at a scale and quality acceptable to the Planning and Development Director.
 - Promote pedestrian access to all on-site development and the Sugar Pine Trail.
 - Provide an appropriate facility for ready access to public transportation.
 - Be subject to public review and comment prior to its approval.
 - Contain appropriate timing provisions to assure the entire project is a mixed-use development.
- b. No supermarkets (as defined by Fresno Municipal Code Section 12-105-S-36) or home improvement centers shall be permitted. Notwithstanding the above, the Planning and Development Director, subject to the approval of a conditional use permit (CUP), may allow specialty grocery and food sales, home design stores, appliance sales, and other retail and service uses over 15,000 square feet in gross building area. The primary purposes of the CUP are to (1) evaluate and limit excessive peak hour vehicle trips, (2) permit retail uses that are compatible with the entire Fresno 40 office/retail/residential mixed-use project, and (3) ensure a proper interface and compatibility with surrounding properties and uses.
- c. A minimum 50-foot landscaped setback and earth berm, as reviewed and approved by the Planning and Development Director, shall be constructed along East Audubon Drive prior to any construction on the site.
- d. The single story office buildings along East Audubon Drive and East Cole Avenue shall be residential in character.
- e. Only one drive-through restaurant shall be allowed. The restaurant shall be located along North Fresno Street and shall be completely screened from view from abutting public streets.

- f. There shall be no vehicular crossing of the existing Sugar Pine Trail.
- g. Only one driveway access point shall be permitted to Friant Road in a location as approved by the Public Works Director and Planning and Development Director.
- h. Traffic generation from development of the subject property shall not exceed 12,400 vehicle trips per day (VTD) as determined by the Public Works Director.
- i. Provide for construction and installation, when determined appropriate by the Public Works Director, of all public street improvements and on-site vehicular access facilities as described in pages 2.2.33 to 2.2.35 of Revised Draft EIR No. 10129 for the "Fresno 40 Development Project" dated July 2004.
- j. The developer shall agree to indemnify, hold harmless, release and defend the City of Fresno and the Fresno City Council from any action against the City of Fresno and the Fresno City Council.

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CERTIFICATION

I, Nick P. Yovino, Secretary to the Planning Commission of the City of Fresno, certify that the foregoing Resolution was adopted by the Planning Commission of the City of Fresno at a duly noticed and regularly held meeting on the 17th day of November 2004.

AYES:
NOES:
ABSENT:
ABSTAIN:

NICK P. YOVINO
Secretary to the Planning Commission
Director of Planning and Development

By _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By _____

Resolution No.
Rezone Application No. R-00-52
Filed by DeWayne Zinkin
Action: Recommend Approval